

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA,

5 -versus-

08-CR-77

6 LINDA O'CONNOR and DEAN SACCO.
7 -----

8 TRANSCRIPT OF JURY TRIAL

9 held in and for the United States District Court,
10 Northern District of New York, at the Federal Building and
11 Courthouse, 15 Henry Street, Binghamton, New York, on
12 FRIDAY, May 19, 2008, before the HON. THOMAS J. McAVOY,
13 Senior United States District Court Judge, PRESIDING.

14 APPEARANCES:

15 FOR THE GOVERNMENT:

16 UNITED STATES ATTORNEY'S OFFICE

17 BY: MIROSLAV LOVRIC, AUSA

18 Binghamton, New York

19 FOR THE DEFENDANT O'CONNOR:

20 FEDERAL PUBLIC DEFENDER'S OFFICE

21 BY: LISA PEEBLES, AFPD

22 Syracuse, New York

23 FOR THE DEFENDANT SACCO:

24 KELLY FISCHER, ESQ.

25 Binghamton, New York

1 (In open court)

2 MISS PEEBLES: I think there's one thing I
3 wanted to discuss before we bring the jury in.

4 THE COURT: Do you want to go to side-bar?

5 MISS PEEBLES: Yes.

6 (At the bench)

7 MISS PEEBLES: My understanding, the
8 government's going to call their computer expert that
9 examined the hard drive of George Lang, and I understand, as
10 my expert has also found, there's adult pornography,
11 pornographic pictures on there. And I understand the
12 government's position about, you know, there was nothing on
13 the hard drive that had photographs of Shannon O'Connor,
14 Linda or George in any kind of nude image. But as far as the
15 adult pornography that was found on the computer, I would
16 object to that coming in because I don't think it's relevant
17 and there's no indication that my client would have ever seen
18 those adult images in any event. They had e-mail
19 communication back and forth. Obviously, anything sent
20 between the two of them, I don't object to. In fact, some of
21 the e-mails I introduced into evidence. I wanted to bring it
22 to the Court's attention before we brought the jury in.

23 THE COURT: What's the government's position?

24 MR. LOVRIC: Maybe I can just clarify, Judge.
25 Is the defense objecting to photos being shown or talked

1 about what was found on the computer? I'll be able to answer
2 that. Which, or both?

3 MISS PEEBLES: Well, both, simply because I
4 don't know how it would be relevant to the prosecution in
5 this case other than we've already heard testimony from Renee
6 Lang he had adult pornography on his hard drive that she saw,
7 but it's not relevant to this case.

8 THE COURT: What do you say about relevance?

9 MR. LOVRIC: Well, it is relevant, Judge, but
10 just to clarify, I'm not introducing any photographs, so my
11 intention was never to show the jury the -- any of the adult
12 pornography, nor do I have any of that labeled. The reason
13 it is relevant is because Shannon has stated and will testify
14 as well that when she was being physically abused at the Lang
15 residence by both defendant O'Connor and George Lang that
16 they did in fact show her adult pornography on the computer
17 and that George would tell her what some of the images that
18 he showed her, this is what he'd like for her to do to him
19 based on what it was she was being shown. So the adult
20 pornography is relevant because the victim will testify this
21 was shown to her by Lang, George Lang and O'Connor at the
22 time that they were abusing her and that part of it was to
23 show her what he liked for her to do to him. So it clearly
24 is relevant to what was being done to her and what actions
25 were being committed.

1 THE COURT: Okay. So we're clear that there
2 are not going to be any photos.

3 MR. LOVRIC: Right. I'm not offering and I've
4 not marked any exhibits, but the computer expert can talk
5 about having found, you know, certain kinds of photos that
6 he'll describe just generally what they are. I'm not
7 offering the images because offering the images, I don't
8 really think is -- I don't think there's any reason to do
9 that.

10 THE COURT: Might be excludable under 403
11 perhaps anyway.

12 MR. LOVRIC: So that's where we are.

13 (In open court)

14 (Jury present)

15 THE COURT: Afternoon, ladies and gentlemen.
16 You guys all ready to go? Long rest, the whole weekend?
17 Nice warm weekend.

18 All right. Mr. Lovric, have you got a witness
19 for us?

20 MR. LOVRIC: Yes, Judge. The next witness we
21 call is James Thompson. He's coming right in.

22 THE COURT: All right.

23 THE CLERK: Please state your full name.

24 THE WITNESS: James T-H-O-M-P-S-O-N.
25

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1 J A M E S T H O M P S O N, having been called as a witness,
2 being duly sworn, testified as follows:

3 THE COURT: Okay. Mr. Lovric.

4 DIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q Good afternoon, Mr. Thompson.

7 A Good afternoon.

8 Q Just try to speak into the mike so we can all hear
9 you.

10 A Good afternoon.

11 Q Mr. Thompson, could you, for the members of the
12 jury, tell them again your full name and can you tell us
13 where you work.

14 A Yes. My name is James P. Thompson. And I work for
15 Broome County Government, Security Division, and I'm the
16 chief investigator and administrator of the computer analysis
17 and technical services unit, otherwise known as CATS.

18 Q And Mr. Thompson, how long have you worked with the
19 Broome County Security Division, approximately?

20 A About nine years.

21 Q And during the nine years you've been with the
22 security division, about how long have you worked in the CATS
23 unit, as I'll call it?

24 A Since 2000. Eight years now.

25 Q And can you tell us a little bit more just in terms

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1 of what it is that the CATS unit is designed to do and what
2 kind of work does the CATS unit perform?

3 A Sure. CATS operates as a resource for law
4 enforcement, and what we do is process audio, video and
5 computer forensic cases. A law enforcement agency will seize
6 media in the course of investigating the case, and we're the
7 ones that they bring it to to actually process that media and
8 turn over a report and analysis when we're done with it.

9 Q And what is your function within the CATS unit?

10 A I am the chief investigator. I serve as an
11 assistant director for our division for Broome County
12 Government Security Division, and I have a lot of
13 administrative duties on that side of the wall. And then
14 with the CATS unit I serve as the lead investigator and lab
15 director.

16 Q Now, the police agencies that your unit helps and
17 assists, what types of agencies are those within the area?

18 A They would consist of state and local and federal
19 agencies from six counties from central New York.

20 Q And in the course of working at the CATS unit and
21 in your capacity as assistant director within the security
22 division, have you also, yourself, analyzed and done analyses
23 of medium such as computers or other media of electronic
24 storage?

25 A Yes, I have.

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1 Q And for about how many years have you been doing
2 that kind of work?

3 A Since 2000.

4 Q And about -- and again, approximately about how
5 many, if you can, quantify about how many different types of
6 medium have you either conducted analysis of or assisted in
7 conducting analysis of?

8 A Different types of medium would be computers,
9 cellphones, CDs, DVDs, removable flash media such as thumb
10 drives. Anything that is capable of storing digital
11 information, iPods, MP3 players.

12 Q And over the years, how would you quantify the
13 number of items that you've conducted analysis of?

14 A Well, I personally probably have worked on close to
15 80 cases myself that I've performed. Typically, the CATS
16 unit will, on the computer end, process between 40 and 50
17 cases a year.

18 Q Okay. And when you say cases, are you referring to
19 a case that's actually investigated or prosecuted by an
20 agent?

21 A Yes.

22 Q And what type of computer training and computer
23 knowledge in the sense of formal training or formal knowledge
24 have you obtained over the course of these years?

25 A I have over 550 hours of training in computer

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1 forensic and investigation.

2 Q And in the course of your job and your work, do you
3 also receive any type of certifications from computer-based
4 associations?

5 A Yes. I have two certifications. I am certified as
6 a computer crime investigator by the High Tech or High Tech
7 Crime Network and I have the seized computer evidence
8 recovery specialist designation from the Federal Law
9 Enforcement Training Center.

10 Q And from time to time do you still go to various
11 conferences or training centers to keep yourself up to date
12 to the newest technology that's out there?

13 A I do. We require that our analysts attend a
14 minimum of 40 hours a year in ongoing training.

15 Q And in your capacity at the CATS unit do you also
16 instruct other individuals and actually train or teach them?

17 A I do. I assist in the training, I direct the
18 training of any new analyst that may come into or be assigned
19 to the CATS unit, and I conduct training for the Broome
20 County Police Academy. I do a four-hour-long on digital
21 evidence with those people.

22 Q Mr. Thompson, do you also from time to time as need
23 be provide either testimony or written documentation in terms
24 of your analyses on the cases that you either work or assist
25 others in working?

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1 A Yes, I do. After -- at the end of every case, at
2 the conclusion of every investigation that we do, we produce
3 a printed report that's turned over to the case agent.

4 Q Okay. And the other members in the CATS unit, the
5 other investigative computer -- computer investigative
6 personnel, do they -- when they prepare reports, do they
7 also -- those reports come across to you for any type of
8 verification or to sign off on?

9 A Yes. All reports that I do not complete come to me
10 and I sign off on them. I review them for methodology and
11 sign off as a matter of supervisory review. Any report that
12 I manufacture or complete is also given to another
13 investigator for peer review.

14 Q Okay.

15 MR. LOVRIC: Your Honor, at this time I'm
16 going to go into a number of areas with Mr. Thompson, some of
17 which will require him to offer his opinion based on his
18 knowledge and based on his training. So at this point I
19 would ask to be allowed to do that with this witness.

20 THE COURT: Does the defense wish any voir
21 dire?

22 MISS PEEBLES: I'm not sure in what area he's
23 going to be offered as an expert. In terms of examining the
24 hard drive, I have no objection to that part of it.

25 THE COURT: Okay.

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1 MISS PEEBLES: If he's going to be an expert
2 as to what he saw, I might have a problem with that, Judge.

3 THE COURT: All right. We'll allow him to
4 testify in this area of the computer analysis, analyses of
5 the hard drive. If it gets to be a problem, please just
6 object.

7 MISS PEEBLES: Yes.

8 THE COURT: Mr. Fischer, is that all right
9 with you, sir?

10 MR. FISCHER: Yes, your Honor. Thank you.

11 THE COURT: You may proceed, Mr. Lovric.

12 BY MR. LOVRIC:

13 Q Mr. Thompson, I'd like to talk about an analysis
14 that you performed with respect to a computer. I'll call it
15 the Lang computer. Do you recall being involved in the
16 analysis of a computer that was brought to you by the New
17 York State Police?

18 A I do.

19 Q And about when, approximately when was it?

20 A I believe it was January 10 of this past year.

21 Q Of the current year?

22 A Current year.

23 Q And just generally speaking, what was it that was
24 brought to your -- to the CATS unit for analysis?

25 A It was an eMachines brand tower computer with

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1 off-the-shelf configuration.

2 Q And when you say eMachines, what does that mean?
3 What is that?

4 A EMachines is the brand name manufacturer, if you
5 will.

6 Q Okay. And the item that's brought to you, was it
7 just the computer, the tower part or the monitor and keyboard
8 and all those kind of things also brought to you?

9 A No. It was just the tower.

10 Q Okay. Did you then at some point conduct a
11 forensic examination of that tower, that computer in
12 connection with the case at hand here?

13 A I did.

14 Q And can you just very briefly tell the jurors, when
15 you set out to do a forensic examination or analysis of a
16 computer system or the tower in this case, what do you do
17 generally in order to start to do a forensic analysis of it?

18 A Well, after the computer or computers is accepted
19 into our evidence stream and it's assigned to myself or
20 another analyst, the first thing we would do is we'd review
21 the case file, any accompanying documentation that came in
22 with it. We'd analyze or examine the exterior of the
23 computer, the computers for any scratches, dents, any broken
24 parts and any unusual configurations. If there was anything
25 obvious from the exterior of the computer that we might want

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1 to pay particular attention to. For example, the addition of
2 high-end video card or some sort of other device. We
3 photograph everything from all angles, take the computer
4 apart again, photograph the inside, look at it again for
5 anything unusual that would be out of the ordinary. Look for
6 the storage device, which would be the hard drive or hard
7 drives -- many times computers would contain more than one
8 hard drive -- and label the wires, disconnect them from the
9 hard drive. We would then hook the computer up to one of our
10 computers and examine the input and output settings of the
11 computer, otherwise known as BIOS or CMOS settings that would
12 determine things like date and time settings of the -- in
13 boot sequence. The computer actually interfaces the software
14 with the user.

15 After that particular point in time we would start
16 the forensic imaging process, and when I say imaging, we use
17 proprietary software to actually make what's referred to as a
18 bit stream copy of that hard drive. It's an exact copy of
19 beginning to end, all the available space on that particular
20 hard drive or hard drives or electronic media. When that's
21 complete, we verify that the forensic image that we made is
22 exact to the original media and then we would, with the
23 original media, put the computer back together, assign it
24 back into our evidence stream so it's stored in our evidence
25 storage, and we would load the forensic image into one of our

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1 forensic software programs and then begin our search based on
2 the information we were given by the case agent or the
3 warrant or the consent. In the course of doing the search,
4 we would bookmark, set aside, if you will, the information
5 that we would consider important to be included in the final
6 report, and at some point in time we would take that
7 information and compile it into the final report and analysis
8 and call up the case agent and deliver the report and explain
9 it, obviously, to the case agent.

10 Q Okay. Now, in this particular case, the agency
11 that provided the computer to you to analyze was what agency?

12 A New York State Police.

13 Q Okay. And the -- the things that you just
14 described what you do, Mr. Thompson, I take it from your just
15 description, do you or any member of your unit, do you
16 actually work on the actual hard drive or you work on that
17 image that you just described was created?

18 A We work on the image. That way the original
19 evidence isn't altered in any way.

20 Q Okay. So that original hard drive or original
21 computer is then preserved, and whatever you do to
22 forensically look for things, you do it on that copy you
23 made?

24 A Correct.

25 Q The -- this particular computer, the Lang computer,

James Thompson - Direct

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1 how many hard drives did it have?

2 A This had one hard drive.

3 Q Okay. Is that fairly typical of most people's
4 computers?

5 A I would say it's typical.

6 Q Now, although it may seem obvious, the hard drive
7 of a computer is -- does what? What does it exactly do?

8 A The hard drive in its most basic form is merely
9 the -- the device within a computer that will store both the
10 operating system files, the files that actually make the
11 computer work, like Windows, for example, and all
12 user-created files. Those electronic files would be stored
13 on that hard drive.

14 Q Okay. So, in layman's terms, if a person -- let's
15 use the Lang computer. If a person is going to create
16 documents, letters that they perhaps would send or if they're
17 going to have any kind of photographs that they want to store
18 or save or e-mails that they send to and from someone, where
19 on the computer would all those things be stored?

20 A Well, any user-created files would be stored on the
21 hard drive.

22 Q Okay. Now, when you conducted the forensic
23 analysis of the Lang computer, just generally can you tell us
24 what it is that you did to search that computer and how is
25 that performed in terms of your forensic analysis.

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1 A In this particular case we were asked to search the
2 computer for any images of an approximately 12- to
3 14-year-old female. I was furnished with her name, and once
4 the image file was actually loaded into the forensic program,
5 I performed a file recovery. In other words, I had the
6 computer go out and look through the entire hard drive for
7 any image files that may have been deleted that were still
8 recoverable. And once that occurred, all those files that we
9 found in that manner were added to the total bulk of the
10 graphic images, and I visually examined all those graphic
11 images in the file or in the case.

12 Q Okay. So, in this particular case you were given
13 some information to look for a particular type of photograph
14 or photographs or images?

15 A I was.

16 Q Okay. And I take it at some point did you learn
17 the person that you were being asked to look for was any
18 image or photograph of Shannon O'Connor?

19 A Yes.

20 Q Okay. Did you find any photographs or images of
21 Shannon O'Connor on the Lang computer?

22 A I did not.

23 Q Now, when you went through forensically and were
24 extracting photographs or images on the Lang computer, did
25 you find images or photographs of some type on that computer?

James Thompson - Direct

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1 A Yes, I did.

2 Q What -- can you describe what you found and what
3 you did observe when you went through the Lang computer.

4 A As far as the images are concerned?

5 Q Yes. Just the images I'd like to talk about at
6 this point.

7 A Well, there were -- if I recall correctly, there
8 were a little over 5,000 total image files on the computer.
9 Roughly 3 to 400 of those files were pornographic in nature,
10 adult porn, if you will.

11 Q Did you at some point actually look at those
12 images, view those images, the pornographic images?

13 A You have to do that. If I'm looking for one
14 particular file, I would have to view all the files, yes.

15 Q And can you just describe generally what you saw in
16 terms of kinds of images that were on the computer.

17 A The images of the adult pornography consisted of
18 images of oral sex, bondage and sadomasochistic type images
19 usually involving two adults, two or more adults.

20 Q And were those -- how would you characterize the 3
21 to 400 images of pornography, were they -- in terms of the
22 persons depicted in the images, were they adults in terms of
23 what you were viewing or were they not adults? How would you
24 describe that?

25 A I would say they were adults.

James Thompson - Direct

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1 Q Okay. Were there any images that you found where
2 they were of younger-looking persons or young-looking adults,
3 if I can put it that way?

4 A Yes. There were a handful of images, I believe
5 four to six images that I bookmarked that were of what I
6 considered young females.

7 Q Okay. Were these also included in the pornography
8 type images that you indicated you found?

9 A Yes.

10 Q Now, in addition to finding the pornography that
11 you described, did you also recover any e-mails from that
12 Lang computer?

13 A Yes. Approximately six e-mails that appeared to be
14 between a Linda O'Connor and a George Lang.

15 Q And with respect to the images and the e-mails that
16 you did recover, did you -- did you find or did you come to
17 any conclusions whether or not there were any other files
18 that were on that computer at some point but which you could
19 not retrieve?

20 A Yes. In searching for -- when we're working on a
21 case that involves graphics, graphic images, often we will
22 look for artifacts that's created by the Windows operating
23 system in this case that would indicate the presence of files
24 that aren't retrievable anymore. In particular, with image
25 files, the image files in this particular case, the Lang

James Thompson - Direct

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1 computer, were stored in a folder called My Pictures. It was
2 a default location that Windows creates on installation.
3 Inside that folder and any subsequent folder that contains
4 graphic images, Windows creates by default a hidden file
5 called thumbs.db. In order to create that file, the
6 thumbnail view or the film script view has to be enabled in
7 Windows, and that is a default setting when you install
8 Windows. Thumbs.db exists for the purposes of speeding up
9 viewing, facilitating viewing of any images you may have
10 stored there. What it does, though, is it caches all the
11 file names that are present in that folder that are graphic
12 images and keeps a record of those. Because it is a hidden
13 file, oftentimes when images are moved or deleted from a
14 particular folder, that file gets left behind and never gets
15 deleted and that file, that thumbs.db file -- and again, one
16 can exist for every folder that contained graphic images --
17 those hang around in the computer forever because they've
18 never been deleted. And again, it's a source of information
19 for us because we can look at these files and say that these
20 particular files, even though they are not being able to be
21 found at present on the computer, existed at some point in
22 time on the computer.

23 Q Okay. So, let me ask you if we understand -- we
24 can stay on that topic for a few moments, Mr. Thompson. On
25 the Lang computer, were you able to, through this thumbs

James Thompson - Direct

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1 cache, as you described, were you able to tell whether at
2 some point in time there were other images, photographs, on
3 that computer which you could no longer retrieve to look at
4 but which were there at some point in time?

5 A Yes.

6 Q Okay. And what could you tell from this cache as
7 to what was there?

8 A Again, the cache file will keep track of any image
9 file that was in that particular location where the thumbs
10 file exists in that particular folder. So a file could be
11 put there and deleted and the name of that file will remain
12 in that thumbs.db file.

13 Q Okay. So, the name of the file, you can see it and
14 you found it, but you couldn't retrieve the file itself
15 anymore?

16 A That's possible, yes.

17 Q Okay. Now, with respect to the Lang computer, did
18 you find or identify file names that were indicative of
19 photographs that used to be there but no longer were on the
20 Lang computer?

21 A Yes. Everything in the thumbs.db file will be
22 image files including photographs. So, yes, I did.

23 Q Okay. Now, when you conducted your forensic
24 analysis, could you tell at all -- could you tell or not, by
25 the file name that remains, what that photograph was or was

James Thompson - Direct

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1 not of?

2 A Not really. Again, a file can have any name. It
3 can be -- because it says 010.jpg, I have no idea what that
4 could actually be. Some files names can be very descriptive,
5 you have a good idea as to what they are. I can't tell for
6 certain if I can't see the picture.

7 Q So just by that remnant name, it doesn't tell you
8 necessarily what the image was of?

9 A Correct.

10 Q Did you find any file names which were nondescript,
11 for example?

12 A Yes. Many of them would have a series of numbers
13 before the .jpg, which is the suffix that would indicate a
14 jpeg image file. Obviously, that, I have no idea of telling
15 what those are, or a series of letters and numbers that
16 wouldn't be descriptive at all of anything.

17 Q Could you -- just for the jury can you indicate
18 what jpg and jpeg, what does that signify in computer lingo?

19 A That's probably the most common compressed image
20 file format that we deal with, that anybody deals with. It's
21 jpeg, or jpg, commonly referred to as jpegs, are typically
22 what -- if you took pictures with your digital camera,
23 probably a set default to save them as jpeg files.
24 Downloading pictures from the internet oftentimes will come
25 down as jpeg. The reason for that, it uses a compression

James Thompson - Direct

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1 format where it can actually make the file size smaller,
2 which makes it easier to transmit over the internet, upload,
3 download, and it also makes the media that contains those
4 images capable of storing more files. So that's why it's so
5 common.

6 Q So, on the Lang computer, when you're looking and
7 you see something, either letters or numbers, and then you
8 have .jpg or .jpeg, those last three or four letters signify
9 to you what?

10 A It's an image file.

11 Q By image, that means what?

12 A A graphic picture, a graphic image file.

13 Q Versus a document, for example?

14 A Correct.

15 Q Now, on the Lang computer, you found, as you
16 indicated, some of these file names which indicate that
17 something was there before but no longer can be retrieved, is
18 that correct?

19 A Yes.

20 Q Can you tell by your forensic analysis what caused
21 that file to -- that graphic image to no longer be
22 retrievable?

23 A I can't tell for certain why it isn't there
24 anymore. There are several reasons why it could be gone.
25 Purposeful deletion by a user, corrupted files, files that

James Thompson - Direct

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1 have been scrambled, if you will, by the operating system or
2 by some particular occurrence that went on within the
3 operating system. Most typically, though, they're gone
4 because the user deleted them or moved them somewhere else.

5 Q Okay. So, is it fair -- Mr. Thompson, it could be
6 intentional or unintentional reasons behind why an image is
7 no longer there, if you can tell it was there at some point?

8 A That's fair, yes.

9 Q Now, in the Lang computer, you indicated you found
10 file names that indicate to you that these were at some point
11 graphic images that were present --

12 A Yes.

13 Q -- no longer there?

14 A Yes.

15 Q Did you also find any file names at least by the
16 name indicative of some type of pornographic material?

17 A By description of the file itself, the file name,
18 yes, you have to draw a conclusion that it would be
19 pornographic.

20 Q Based on the wording in the file name?

21 A Exactly.

22 Q In conducting the examination of the Lang computer,
23 did you also find file names or remnants of folders, or
24 files, rather -- excuse me -- where you saw the letters DSC
25 and DSCF?

James Thompson - Direct

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1 A I believe there were three or four entries in the
2 thumbs.db cache that would meet those descriptions.

3 Q And what is -- in computer lingo what significance
4 is there to a file that begins DSC or DSCF?

5 A In computer lingo, huh? Okay. DSC is a common
6 format that is created by Sony DSC model cameras, and the
7 existence of those files on media to me would be consistent
8 with the fact that those files were created, taken by a Sony
9 DSC model camera and not renamed. That was -- would be how
10 they would appear directly from the camera.

11 Q Okay. And obviously if the person chooses to
12 rename it and they rename it, then you won't find that file
13 name as the camera had given it the name?

14 A Unless they saved the original format also.

15 Q Okay. The original format of the original picture?

16 A Of the original picture.

17 Q Now, these file names that you found through your
18 forensic examination but which you can no longer retrieve the
19 actual files, based on your examination of the Lang computer,
20 is there any way to retrieve these or reconstruct these where
21 you found file names but no longer can retrieve these, or is
22 it simply they're gone?

23 A In my opinion, in this particular computer, some of
24 those files were gone and I could not retrieve them.
25 Typically, when I run a file recovery at the beginning of the

James Thompson - Direct

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1 case and I try to look through the entire contents of the
2 media for image files, what the software does, and what we
3 would do manually if we didn't have automated software, is to
4 look for a signature. Every file, every format has a
5 particular signature, and the computer, the forensic software
6 actually searches the bulk of the media for the existence of
7 that particular -- what they call a file header, and if it
8 can't find that, it doesn't identify it as a picture. It is
9 possible and indeed it occurs in nearly every case we work
10 where image files are corrupted in some way, shape or manner
11 or they've been deleted and some of the information has been
12 overwritten and they end up being nonrecoverable.

13 Q Okay. On the Lang computer, based on your
14 analysis, are you able to speak to whether or not there were
15 at one point graphic images that are no longer recoverable,
16 that are no longer there?

17 A I would say yes, that there were, based on the
18 contents of the thumbs.db cache and what we found, certainly
19 there are graphic images that I wasn't able to locate, at
20 least by title, by description.

21 Q Okay. And which were there at some point, based on
22 what you saw?

23 A Yes. If they're in the thumbs.db cache, they were
24 on the media at some point in time.

25 Q With respect to those, were you not able to come to

James Thompson - Direct

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1 any conclusion whether they were intentionally or
2 unintentionally removed?

3 A No, I wasn't.

4 Q Now, in looking at the Lang computer, conducting
5 the examination, were you able to tell whether or not the
6 Lang computer ever had any scanner attached to it?

7 A Yes. I determined that there was, I believe, a
8 Visioneer model scanner attached through USB port at some
9 point in time to that computer.

10 Q Again, just for all of us but mostly for the
11 record, can you describe very briefly what is a scanner and
12 how does that -- how does the scanner get utilized with a
13 computer?

14 A A scanner is very similar to a copy machine, and
15 instead of having a hard copy output, what you're doing is
16 copying an existing document or photograph, and instead of
17 printing out a piece of paper, it actually creates a computer
18 file that you can store on digital media.

19 Q Okay. And so by way of example, if someone
20 utilizing the Lang computer had wanted to save a photograph
21 that they had, a hard copy of the photograph, how would they
22 go about utilizing a scanner to save it onto the computer?

23 A They'd simply put the photograph in the scanner and
24 start it through its routine, and the scanner in most cases,
25 like a copy machine, you'll see a light go across the glass

James Thompson - Direct

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1 platen. It will make a digital copy of what's on the platen,
2 in this case an image, and it will ask you to give it a
3 title, give it a file name and a location you'd like to save
4 it to. And it's that simple.

5 Q And then once that photo has been scanned and saved
6 on the computer, then can the individual, in this particular
7 case whoever would be using the Lang computer, could they,
8 for example, e-mail that photograph to somebody?

9 A Certainly.

10 Q Or could they -- could they print it out at some
11 later date and have a hard copy of that photograph?

12 A Yes.

13 Q Now, in looking at the Lang computer, were you able
14 to determine whether or not that computer at any point in
15 time had a thumb drive storage attached to it?

16 A Yes, it did.

17 Q Can you first tell us, what is the thumb drive
18 storage unit that was attached to the Lang computer?

19 A What's referred to as a thumb drive or a flash
20 drive is a -- contains electronics that's referred to as
21 flash media or flash memory. It's very similar to the memory
22 cards that you have in your digital cameras and some people
23 have in their cellphones. The same electronic principle
24 exists. Something the size of your thumbnail, the actual
25 digital media, it is capable of holding a lot of information.

James Thompson - Direct

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1 I believe the biggest ones I've seen on the market today are
2 around 8 gigabytes. The entire device itself typically could
3 be an inch and a half, two inches long, very, very thin and
4 again, about the size of a human thumb except for a lot
5 thinner and could be carried easily in a pocket. It's meant
6 to make data portable.

7 Q And with respect to the Lang computer were you able
8 to determine what type of a thumb drive or flash drive, as
9 you indicated?

10 A Yes. I believe it was a SanDisk Cruzer,
11 C-R-U-Z-E-R. SanDisk is a manufacturer of flash drives.

12 Q Okay. How would such a drive -- or excuse me. How
13 would such a storage unit be utilized, specifically on the
14 Lang computer? Where would somebody put that in or plug it
15 in? How would they do that?

16 A There are ports or receptacles, in this particular
17 case, on the front and the back of the computer, where
18 somebody could just simply insert this small device, and the
19 computer, through the operating system, would recognize this
20 device and you'd be able to access any files that were
21 already on it or put new files on the device.

22 Q Okay. And you indicated that you could tell
23 through your forensic analysis that such a device at some
24 point had been used on the Lang computer?

25 A Yes. In the Windows operating system there's a

James Thompson - Direct

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1 section of the operating system called the registry, and the
2 registry is basically a database of all the settings in the
3 computer, all the software that a person has loaded in this
4 computer. This is the depository of all the defaults that
5 the person has chosen, the way the software and the computer
6 interact, basically, if you will. And there's a section of
7 the registry that keeps track of all USB devices that were
8 inserted into that particular computer.

9 Q Okay. And the SanDisk thumb drive, disc thumb
10 drive or flash drive device, how much data or how much
11 storage capacity are we saying or talking about that this
12 could hold, given the fact it may depend on how many
13 gigabytes of information you can hold? What are we talking
14 about, generally speaking, how much data these things can
15 hold?

16 A Well, again, I have no way of telling how big this
17 particular device was in terms of size of digital media. It
18 could have been a small one or probably been up to 2
19 gigabytes a couple years ago. This is about the biggest you
20 can get. If you consider that perhaps that device was 256 or
21 512 megabytes and that a typical jpeg file, one that may have
22 been taken with a digital camera, for example, not just the
23 jpeg but any other image file format might be 5 to 10
24 megabytes, that would be a very high-resolution typical
25 snapshot that someone would take, that can hold quite a

James Thompson - Direct

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1 number of images.

2 Q And I take it that this thumb drive, flash drive
3 device, as you indicated, is sometimes portable?

4 A Absolutely.

5 Q If a person has a thumb drive, can they use it just
6 on their computer or can it be used on any computer?

7 A No, it can be ported to any computer and used on
8 any computer that would have a Windows operating system and
9 actually any Mac computer would recognize a thumb drive.

10 Q So the thumb drive that was -- at some point as you
11 indicated there was a thumb drive attached to the Lang
12 computer. That same thumb drive, at that time, whenever it
13 was utilized, could have been taken to any other person's
14 computer and plugged in and you could view whatever is on
15 that thumb drive?

16 A Sure.

17 Q You talked a little bit about the hard drive of the
18 Lang computer, and we have been talking about this thumb
19 drive that at some point was connected to the Lang computer.
20 If the person operating the Lang computer wanted to save
21 something, okay, wanted to save it, would they necessarily
22 have to save it on the hard drive if they have a thumb drive
23 that's also plugged into the computer?

24 A No. When you plug in a thumb drive, the operating
25 system, once it recognizes the fact that the drive is there,

James Thompson - Direct

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1 gives it what we call a logical operator or a letter, a drive
2 letter number. Typically your hard drive in most cases will
3 be referred to as the C drive or it will have the letter C in
4 front of it, designating the main hard drive volume. It
5 could, when you plug in the thumb drive, be called any
6 letter, depending on how your computer is set up, or almost
7 any letter, and that person would -- the person saving the
8 file would have a choice when they go to save the file as to
9 where they want the file to be. Anyone who's operated a
10 Windows computer would be familiar with the window that comes
11 up, and at the top of that window it will have the location
12 where the file you're saving is going to be. So that can be
13 changed simply by dropping down the little arrow and steering
14 the computer toward the thumb drive and, for that matter, you
15 can divide the thumb drive up and put it in any particular
16 folder within the thumb drive and save it there.

17 Q Okay. So, you could save it to the thumb drive
18 without ever having to save it to the hard drive?

19 A Yes.

20 Q And then you can take that thumb drive to somebody
21 else's computer, plug it in and pull up whatever photo images
22 you had stored on your thumb drive?

23 A It's possible.

24 Q Now, when you got the Lang computer and started it
25 up, were you able to tell anything about the Lang computer as

James Thompson - Direct

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1 you began the computer, it started or tried to get it to
2 start up to start conducting your imaging and the things that
3 you described earlier?

4 A Right. We didn't actually start the computer up.
5 We never start up the subject computer because that would
6 actually change files that are inside the computer. It came
7 to my attention that possibly the computer hadn't been used
8 in a while because it had some difficulty with the operating
9 system. In examining the operating system, we determined
10 that the software installed on that computer that would
11 actually facilitate recovery if something did happen to the
12 computer -- and with this particular software package, it's
13 in my experience that if you aren't familiar with it and you
14 try to run other recovery software or corrective software on
15 this machine or a machine that has it on there, that what's
16 going to happen is you're going to have a lot of corrupted
17 files.

18 Q Okay. So when it got to you, the hard drive, did
19 it appear that someone had tried to do something with it
20 which may have corrupted a lot of files that were prior to
21 that on that computer?

22 A It was difficult to enter the -- what we had
23 considered called the BIOS system, basic input/output system.
24 And again, based on that fact, we did obviously get in there,
25 but based on that fact and the information that I was given

James Thompson - Direct

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1 that the computer hadn't been used because there was
2 difficulty with it, we suspected that there was some problem
3 with the operating system or software that was contained on
4 it.

5 MR. LOVRIC: Those are all the questions I
6 have, Judge.

7 THE COURT: Mr. Fischer?

8 MR. FISCHER: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. FISCHER:

11 Q Sir, I'm Kelly Fischer, I represent Mr. Sacco. I
12 want to make it clear, you found no pictures of Shannon
13 O'Connor, am I correct?

14 A That's correct.

15 Q Did you find any pictures of Linda O'Connor?

16 A No, I did not.

17 Q Did you find any pictures of George Lang?

18 A Yes, I did.

19 Q Did you find any pictures of Dean Sacco?

20 A No, I did not.

21 MR. FISCHER: Those are all the questions.
22 Thank you.

23 THE COURT: Miss Peebles.

24 CROSS-EXAMINATION

25 BY MISS PEEBLES:

1 Q Agent Thompson, you prepared an investigative
2 analysis report in this case?

3 A I did.

4 Q And you submitted that report to investigator Terry
5 Schultz of the New York State Police?

6 A Yes.

7 Q And you shared with him your findings concerning
8 the analysis of the hard drive, and that's really essentially
9 what's in your report, right?

10 A Yes.

11 Q And you knew exactly what you were looking for when
12 you were examining the hard drive, the Lang hard drive?

13 A Well, I knew I was looking for image -- image of a
14 12- and 14-year-old female, and I was furnished with her name
15 and Miss O'Connor's name and that was pretty much it.

16 Q And you talked about USB ports, you mentioned that
17 there was a flash drive and you also mentioned a scanner.
18 There was no evidence that a digital camera had ever been
19 hooked up to one of the USB ports on the Lang computer?

20 A There was not.

21 Q Correct. And you were able to find thousands of
22 files in unallocated space on the hard drive?

23 A Not sure of the number, but yes, there were many
24 files recovered from the unallocated space.

25 MISS PEEBLES: I have no further questions.

James Thompson - Redirect

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1 Thank you.

2 THE COURT: Mr. Lovric.

3 MR. LOVRIC: Just one question, Mr. Thompson.

4 REDIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q If a person using the Lang computer had a US -- a
7 USB thumb drive, the thing we discussed earlier, and if they
8 went to another computer, attached the digital camera, could
9 they then save that to the thumb drive and view it on the
10 Lang computer?

11 A Certainly. Any file that's created on a thumb
12 drive can be ported to another computer. If it's there, it
13 can be viewed.

14 MR. LOVRIC: That's all I have.

15 THE COURT: Mr. Fischer.

16 MR. FISCHER: Nothing. Thank you.

17 THE COURT: Miss Peebles.

18 MISS PEEBLES: One other question, Agent
19 Thompson.

20 RECROSS-EXAMINATION

21 BY MISS PEEBLES:

22 Q As far as the DSC files that you mentioned, the
23 couple of photographs that had that next to it, is it not
24 true that if you go onto an internet site you can pull off
25 DSC pictures and put them onto your hard drive?

James Thompson - Recross

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1 A Certainly.

2 MISS PEEBLES: No further questions.

3 THE COURT: Anything further from anybody?

4 MR. FISCHER: No, your Honor.

5 (Witness excused)

6 THE COURT: Thank you, Agent Thompson. You
7 may step down, sir.

8 MR. LOVRIC: The next witness is coming down.
9 It's James Parmalee.

10 THE COURT: Okay.

11 THE CLERK: Please state your full name.

12 THE WITNESS: James Parmalee, P-A-R-M-A-L-E-E.

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James Parmalee - Direct

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1 J A M E S P A R M A L E E, having been called as a witness,
2 being duly sworn, testified as follows:

3 MR. LOVRIC: Judge, if I can have a moment
4 just to set or turn on this machine.

5 THE COURT: Okay.

6 DIRECT EXAMINATION

7 BY MR. LOVRIC:

8 Q Good afternoon, Mr. Parmalee.

9 A Good afternoon.

10 Q Mr. Parmalee, could you, for the members of the
11 jury, state your full name for them.

12 A James Freeman Parmalee.

13 Q Mr. Parmalee, what county do you reside in?

14 A Chenango County.

15 Q And about how long have you lived in the Chenango
16 County area?

17 A Off and on since I was the age of 6. I'm 38 now.

18 Q Okay. Quite a while?

19 A Yes.

20 Q Mr. Parmalee, I'd like to talk about an event with
21 respect to a location of 45 Fair Street in Norwich, New York
22 and a person by the name of Shannon O'Connor. Let's talk
23 about Shannon O'Connor. Did you know or do you know who
24 Shannon O'Connor is?

25 A Yes, I do.

James Parmalee - Direct

1367

1 Q How did you come to interact or know Shannon
2 O'Connor?

3 A Shannon was my daughter's best friend.

4 Q Okay. And I take it your daughter's approximately
5 the age of Shannon O'Connor?

6 A Yes, she is. She's 13.

7 Q I'm sorry?

8 A She's 13.

9 Q And in 2006, the fall of 2006, if I can talk about
10 that, your daughter would have been in what grade at school,
11 level, grade?

12 A She would have been in sixth grade.

13 Q And was Shannon O'Connor, if you know, in the same
14 grade or the same grade level as your daughter?

15 A That I don't know.

16 Q Okay. Do you know if they went to school together?

17 A Again, I don't know. I believe they did but I
18 don't fully know.

19 Q Okay. And to your knowledge how did Shannon
20 O'Connor and your daughter know each other?

21 A I'm not exactly sure exactly how they met, but I
22 believe through school and other acquaintances.

23 Q Okay.

24 A They were friends at school, but I'm not sure if
25 they were in the same grade.

James Parmalee - Direct

1368

1 Q Okay. Do you know if they went to the same school?

2 A They were both in the Stanford J. Gibson School,
3 yes, at the same time.

4 Q Okay. And at some point in time I take it you met
5 Shannon O'Connor through your daughter either having her over
6 for a play date or playing together, something of that sort?

7 A Yes.

8 Q Did you know or -- did you know much about Shannon
9 O'Connor's mother, as far as, did you ever meet her, did you
10 ever get to know her, anything like that?

11 A Just in passing. I never really sat down and
12 talked to her, no.

13 Q Okay. Did you meet her, or you never really met
14 her, just kind of knew who she was?

15 A Just knew who she was. Never -- I met her maybe
16 twice, but it was for a brief one minute, two minutes.

17 Q Okay. All right. Would you recognize her if you
18 saw her here?

19 A Yes, I would.

20 Q Okay. Take a look around the court. Do you see
21 her in court anywhere?

22 A Yes, I do.

23 Q Can you just tell us where.

24 A She's sitting over there, the second person on the
25 left.

James Parmalee - Direct

1369

1 Q Okay. Second person from the far left?

2 A Yes.

3 MR. LOVRIC: Just for the record, defendant
4 O'Connor.

5 Q I take it you didn't know Mrs. O'Connor at all, it
6 sounds like?

7 A No.

8 Q The interaction you had had with Shannon was
9 primarily through your daughter either playing with her or
10 being with her?

11 A Yes, it was.

12 Q Now, I'd like to talk about an event sometime prior
13 to Christmas of 2006. Do you recall going to the O'Connor
14 residence at 45 Fair Street?

15 A Yes, I do.

16 Q And what was the purpose in going there?

17 A Shannon had missed a couple of days of school that
18 week, and Brooke was wondering how she was doing, if she was
19 okay, she was sick. So we had stopped over to see her.

20 Q Okay. Brooke is your daughter?

21 A Yes.

22 Q And at that time did you go over to Shannon's
23 house?

24 A We went on -- I believe it was either Thursday or
25 Friday to see her, to see if things were okay.

James Parmalee - Direct

1370

1 Q At that point did you know where Shannon lived
2 or -- or you didn't at that point?

3 A Yes, I did know.

4 Q Okay. Had you ever been there before to that
5 residence?

6 A Maybe once or twice. That was just to drop Shannon
7 off or pick Brooke up.

8 Q Okay. And this event where you went to the
9 O'Connor residence to see how Shannon was doing, to the best
10 of your recollection do you know if this was before or after
11 Christmastime of that month?

12 A I believe it was before Christmas.

13 Q Okay. And who went to the O'Connor residence in
14 addition to yourself?

15 A Myself, my daughter and my wife and my son.

16 Q Okay. Did you -- how did you get there?

17 A We drove our Jeep.

18 Q Okay. So you drove over there?

19 A To the residence, yes.

20 Q And at some point did you go up to the house to
21 knock on the door?

22 A My daughter and I went to the house. My wife
23 stayed along with my son in the vehicle.

24 Q Okay. Now, Mr. Parmalee, what I'd like to do is --
25 I'd like to show you -- it will be on your monitor -- some

James Parmalee - Direct

1371

1 photographs that are already in evidence, but I'd like to put
2 them on the screen and just have you tell us where at the
3 house you went on this occasion.

4 A Okay.

5 Q Mr. Parmalee, just for the record, I'm going to put
6 on the screen Government's Exhibit 50. And can you see that
7 on your screen?

8 A Yes, I can.

9 Q Okay. Now, do you recognize that house, first of
10 all?

11 A Yes, I do.

12 Q Okay. What is that that you see there?

13 A That's the house where we went to see Shannon, and
14 I dropped her off before at that house.

15 Q Okay. So, that's the residence you went on this
16 day sometime prior to Christmas?

17 A Yes, it is.

18 Q Now, when you arrived at that house, you indicated
19 that you drove there?

20 A Yes, we did.

21 Q Okay. Can you just tell us, approximately where
22 was it that you parked your vehicle when you came up to the
23 house that's in that picture?

24 A We were to the -- in front of this tree that you
25 can see right in front of the house.

James Parmalee - Direct

1372

1 Q Okay.

2 A In between that tree and the bush.

3 Q Okay. So what I'd like to do is, I'm going to
4 point to the screen. You're talking about the tree and the
5 bush, in between the two, somewhere approximately there?

6 A Yes.

7 Q Okay. So that's where you parked your vehicle?

8 A Yes.

9 Q And in what direction was the vehicle pointed or
10 facing when you parked it there?

11 A Facing on the same side of the street down.

12 Q I'm sorry?

13 A Same side of the street down. Just like we drove
14 up, like right next to the house.

15 Q So is the front of your vehicle, is it parked on
16 the side of the street where the O'Connor house is located?

17 A Yes, it was.

18 Q And the front of your vehicle, is it closer to the
19 bush or the tree?

20 A Closer to the bush.

21 Q Okay. So, and your vehicle is pointed towards the
22 bush, in the direction of the bush from the tree?

23 A The bush is where the front engine part of the
24 vehicle was.

25 Q Okay. What I'm going to do, Mr. Parmalee, is

James Parmalee - Direct

1373

1 showing Exhibit 50, so I take it from what you're describing,
2 your car is pointed from the right to the left position, is
3 that what you're saying?

4 A Just like you drove right up to the house.

5 Q Okay. So I'm going to put an arrow on this exhibit
6 to show what direction your car was facing. Is that
7 accurate?

8 A Yes, it is.

9 Q Okay. And who was driving that day?

10 A I was.

11 Q And you indicated who else was with you in the car?

12 A My daughter, my son and my wife.

13 Q Okay. Where in the car was your wife?

14 A Wife was in the passenger front seat.

15 Q Okay. I take it your daughter and son were
16 somewhere in the back seat?

17 A Yes, they were.

18 Q And at some point did you exit the vehicle and go
19 up to the house?

20 A Yes. After we parked the vehicle.

21 Q Okay. And who went up to the house?

22 A My daughter and I.

23 Q And where were your wife and your son when you and
24 your daughter went up to the house?

25 A Still in the vehicle.

James Parmalee - Direct

1374

1 Q And from the time you exited the vehicle to the
2 time that you came back to it, did your wife and son ever get
3 out of that vehicle?

4 A No, they did not.

5 Q So they remained in the car, which is parked
6 where -- near where that arrow is, in the direction that the
7 arrow is pointed, is that right?

8 A Correct.

9 Q And when you went up to the house, you and your
10 daughter, can you tell by looking at this photograph which
11 door you went to when you went up to the house?

12 A The best of my recollection, it was the second
13 door, not the one that's -- that has the D-1 on it.

14 Q Okay.

15 A The next one to the left.

16 Q Why don't you hit the screen where that was.

17 A Right here.

18 Q Okay. So where the green arrows and the green dot
19 just popped up?

20 A Yes.

21 Q So you went to that second stairway to the left of
22 this picture as you're looking at it and that being to the
23 left of the door of D-1, the next door over?

24 A Yes. I believe so.

25 Q Okay. And if it's okay, Mr. Parmalee, I'm going to

James Parmalee - Direct

1375

1 put a P on the photograph itself, P for Parmalee. Is that
2 the stairwell you went up to the door?

3 A Yes. I believe so.

4 Q And then I'd like to put on -- next on the screen
5 Government's Exhibit Number 98 which is in evidence. Can you
6 see that photograph, Mr. Parmalee?

7 A Yes, I can.

8 Q And is that -- is that the actual door that you
9 first went up to when you went to the house?

10 A Yes. I believe so.

11 Q And it has a D-2 there, you see that?

12 A Yes, I do.

13 Q Okay. And what did you do when you got up to that
14 door?

15 A We knocked to find out if anybody was home.

16 Q Try to pull that mike a little closer. You knocked
17 on the door?

18 A Yes.

19 Q And your daughter was with you, I take it?

20 A Yes, she was.

21 Q And did anybody answer that door?

22 A Yes.

23 Q Who answered that door?

24 A Shannon's mother.

25 Q Okay. Now, prior to this event, had you met her

James Parmalee - Direct

1376

1 before or knew who she was by seeing her?

2 A Just by sight.

3 Q Okay. What was the conversation like? What did
4 you say to her, what did she say to you?

5 A The conversation was about Shannon, you know, if
6 she was all right, could we see her, because she had missed a
7 couple days of school and Brooke was worried about her.

8 Q And did Mrs. O'Connor say anything about that?
9 What do you recall her saying?

10 A All I remember, she said she was out back in the
11 upstairs room apartment and that the door was in the back or
12 on the side farther back.

13 Q Okay. Did she say anything more as far as what
14 Shannon -- what she was doing or how she was feeling,
15 anything about --

16 A Not that I recall.

17 Q Now, did Mrs. O'Connor indicate to you where you
18 should go if you wanted to see Shannon to have her -- or to
19 talk to you?

20 A She said it was the back door or the side back door
21 I believe is what she had said.

22 Q Okay. Did she point or did she indicate in any
23 way?

24 A I don't recollect if she pointed or not. But we
25 knew where to go.

James Parmalee - Direct

1377

1 Q Okay. So, let me put on the screen Exhibit 50
2 back. And can you see -- let me ask you: At some point then
3 did you go to another door after you had this conversation
4 with Mrs. O'Connor?

5 A Yes, we did.

6 Q Can you see that doorway or that area that you went
7 to next?

8 A Yes. Yes, you can.

9 Q Can you on your screen just point to it.

10 A Right there (indicating).

11 Q Okay. At that pointer, you put a green pointer
12 mark now in Exhibit 50. There's what looks -- appears to be
13 a white handrail, is that correct?

14 A Yes, it is.

15 Q Okay. I'm going to put a P-2 there, if that's
16 okay. Okay. Can you see that?

17 A Yes, I can.

18 Q And that's the stairway that you went to next?

19 A Yes, it is.

20 Q Okay. I'd like to put on the screen next Exhibit
21 Number 101 that's in evidence. Can you see that,
22 Mr. Parmalee?

23 A Yes, I can.

24 Q And I'm pointing to this right-hand stairway being
25 viewed from the back. It has a U-2 next to it with the right

James Parmalee - Direct

1378

1 handrails. Is that the stairway looking at it from the back
2 of the house?

3 A I believe so.

4 Q Okay. And then I'll put on the screen now
5 Government Exhibit 100 that's in evidence. Do you see the
6 doorway there marked U-2?

7 A Yes, I do.

8 Q Okay. Does that appear to be the door that you
9 then went to next?

10 A Yes, it is.

11 Q Now, when you went to this door that's marked U-2
12 on Exhibit 100, was your daughter with you?

13 A Yes, she was.

14 Q What did you do when you got to this doorway?

15 A We walked up to the door and knocked.

16 Q Okay. Did you go inside?

17 A No, we did not.

18 Q Now, after you left the doorway where you first
19 knocked that you spoke to Mrs. O'Connor and you came over to
20 this doorway that's marked U-2, did you see Mrs. O'Connor or
21 where she was at that point?

22 A No, I did not. I believe she went back inside.

23 Q Okay. Did she come over with you to this doorway
24 marked U-2?

25 A No, she did not.

James Parmalee - Direct

1379

1 Q Did she stand outside while you're knocking on this
2 door?

3 A I don't believe so, no. I believe she went back
4 in.

5 Q Okay. So after you left the door where you were
6 speaking to her and came over, you didn't have any more
7 contact in terms of sight contact with her at that time?

8 A No, I did not.

9 Q Okay. And while you were at this door, U-2, you
10 indicated you knocked?

11 A Correct.

12 Q You didn't go inside, though?

13 A No, we did not.

14 Q What happened after you knocked?

15 A We actually had to knock twice, and Shannon finally
16 came down.

17 Q Okay. Was it -- can you describe how long it was
18 you were waiting and standing there as you knocked the first
19 and second time?

20 A Fifteen, 20, 30 seconds. It was cold, so time
21 seemed to be a little longer than it could have been. But we
22 had to knock a couple of times for her to come down.

23 Q Okay. And during the time that you're waiting at
24 this entrance, at any time did Mrs. O'Connor come over to
25 where you're knocking?

James Parmalee - Direct

1380

1 A No, she did not.

2 Q Okay. And at some point did Shannon O'Connor come
3 downstairs?

4 A Yes, she did.

5 Q Do you recall how she was dressed?

6 A Not fitting for the weather. I don't remember
7 exactly what she was wearing. I'm thinking she was having
8 shorts or something of that nature and a T-shirt. So -- and
9 it was quite cold outside.

10 Q When she came downstairs, where -- did Brooke talk
11 with her briefly somewhere in the vicinity where you guys had
12 just been standing?

13 A Brooke and I both talked to her.

14 Q Okay. And where were you speaking with her?

15 A We were still right on the porch.

16 Q Okay. When you say porch --

17 A The landing right here.

18 Q Okay. Let me just clear that, those two.

19 So right here on this landing, which is Exhibit
20 100?

21 A Correct.

22 Q So you guys talked there for how long would you
23 say, approximately?

24 A Couple of minutes. Maybe two, three, four minutes.

25 Q Okay. And during the time that you're -- you

James Parmalee - Direct

1381

1 and/or your daughter is talking to Shannon, did you at any
2 point see Mrs. O'Connor anywhere outside or anywhere in your
3 line of sight?

4 A No, I did not.

5 Q Did you know where she was?

6 A I assume she was back inside.

7 Q Okay. But you didn't know --

8 A I didn't see her come out or anything of that
9 nature.

10 Q I'm sorry?

11 A I didn't see her come out or anything of that
12 nature.

13 Q Okay. And during the entire time that you and your
14 daughter spoke to Shannon, was it always on this landing?

15 A I believe so, yes.

16 Q Okay. And other than the three of you, did you
17 ever see anybody else outside or anywhere near the house at
18 that point?

19 A No, I did not.

20 Q Okay. Now, while you and your daughter were
21 speaking to Shannon, where was your wife and your son?

22 A In the vehicle.

23 Q Did they ever at any point come out and come over
24 or anywhere come on the property?

25 A No, they did not.

James Parmalee - Direct

1382

1 Q And at the time that you and your daughter spoke to
2 Shannon, I don't want to get -- was it just the general
3 nature of your visit there to check to see how she was doing,
4 things of that sort?

5 A Yes, it was. We were just concerned.

6 Q Did she indicate to you any kind of a problem or
7 anything of that nature?

8 A No, she did not.

9 Q Did you notice anything about her to lead you to
10 believe there was any kind of a problem or anything of that
11 sort?

12 A No, there was not.

13 Q Okay. And what did you do once you and your
14 daughter had finished speaking with Shannon?

15 A We walked back to the vehicle and I believe went to
16 the store.

17 Q Okay. And when you walked back to the vehicle, did
18 you walk back the same way that you had initially gone
19 towards each of those doorways, first the one here that has
20 the P and then the one that has a P-2? Did you walk back to
21 the vehicle on the same side of the house?

22 A Yes, we did.

23 Q Okay. And when you walked back to your vehicle,
24 did you see or did you know -- well, did you see where
25 Shannon went as you walked back to your vehicle?

James Parmalee - Direct

1383

1 A No, I did not. I don't know if she went back
2 upstairs or went to the house. I don't know.

3 Q Okay. And as you walked back to your vehicle, did
4 you see Mrs. O'Connor at any point during that time?

5 A No, I did not.

6 Q And I take it when you got in your vehicle, then
7 you drove off?

8 A Yes. Yes, I did.

9 Q Now, the event that we were just talking and that
10 you described, this was, you indicated, prior to Christmas of
11 that year?

12 A M-m h-m-m.

13 Q Now, the year we're talking about, this is what
14 year we're discussing?

15 A 2006.

16 Q Okay. And how much, if anything, did you know
17 about Shannon and Mrs. O'Connor as far as their living
18 situation?

19 MISS PEEBLES: Objection.

20 THE COURT: Basis?

21 MISS PEEBLES: Foundation.

22 THE COURT: He's asking for personal
23 knowledge.

24 MISS PEEBLES: Relevance.

25 THE COURT: I don't know.

James Parmalee - Direct

1384

1 BY MR. LOVRIC:

2 Q Do you understand my question, Mr. Parmalee?

3 A Yes, I do. I didn't know much about her mother or
4 Shannon at all except as being friends with Brooke.

5 Q So you didn't know much about their business?

6 A No, I did not.

7 Q And I'm going to show you Government Exhibit Number
8 99 in evidence. Can you see that photograph, Mr. Parmalee?

9 A Yes, I can.

10 Q And I'm going to point to the right, this white
11 handrail. Do you see where that's located?

12 A Yes, I do.

13 Q Is that the handrail to the steps that you went to
14 to knock on the door?

15 A Yes, it is.

16 Q Okay. And did you at any point in time, while you
17 were either waiting for Shannon or at any point in time after
18 Shannon came down, did you at any point in time go over to
19 the door where the green arrow is pointed now?

20 A No, we did not.

21 Q Okay. Did you at any point in time go anywhere on
22 the side of the house where the green arrow is pointed now,
23 which is to the far left of this photograph?

24 A No.

25 MR. LOVRIC: That's all the questions I have.

James Parmalee - Direct

1385

1 THE COURT: Mr. Fischer.

2 MR. FISCHER: Thank you, your Honor.

3 May it please the Court and counsel. Mr.
4 Lovric, may I use those photographs?

5 CROSS-EXAMINATION

6 BY MR. FISCHER:

7 Q Mr. Parmalee, my name is Kelly Fischer. I
8 represent Mr. Sacco.

9 Mr. Lovric asked you about the date of this event
10 and he suggested that it occurred before Christmas?

11 A Correct.

12 Q Are you certain of that date?

13 A I'm not certain of the exact date, no.

14 Q Are you certain that it was before Christmas?

15 A I believe it was before Christmas.

16 Q How certain are you about that?

17 A Fairly certain. There was no snow on the ground.
18 It was right before Christmas we actually had snow.

19 Q Do you remember in March of this year, March 25,
20 2008, having a telephone conversation with an investigator
21 about this subject?

22 A Yes, I do.

23 Q Do you remember the investigator inquiring about
24 the time frame when this event occurred?

25 A I believe he asked the time frame, but I don't

1 remember the exact time frame.

2 Q Well, do you remember telling that investigator
3 that this event occurred possibly around December?

4 A That's possible. But I still believe it was before
5 Christmas.

6 Q You may have told the investigator on March 25 of
7 2008 when you had the conversation that this event occurred
8 possibly around December, but now on May 19, 2008 you're
9 pretty certain that it occurred right around Christmastime,
10 am I correct?

11 A Before Christmas.

12 Q Before Christmastime but definitely in December?

13 A I don't know. I just know it was before Christmas.

14 Q Was it before Thanksgiving?

15 A I just know it was before Christmas and it was
16 cold.

17 Q You mentioned that part of the reason you went
18 over, as I understand it, was because Shannon O'Connor had
19 been out of school for several days beforehand?

20 A Correct.

21 Q Do you know that Shannon O'Connor missed several
22 days of school leading up to January 10, 2007? Did you know
23 that?

24 A Possibly. I did not know, no.

25 Q When Mr. Lovric just asked you, you didn't talk at

James Parmalee - Cross

1387

1 all about an event that occurred in January of 2007 when the
2 police came to your house, did you?

3 A No.

4 Q Do you remember that event?

5 A I'm not really sure.

6 Q Do you remember an event when the police came to
7 your house because Shannon had run away from home and had
8 come to your house?

9 A I was not home at that time. I was away on
10 military duty.

11 Q When was that?

12 A January.

13 Q January of 2007?

14 A If that's what you said. You said they came to my
15 house in January. I just know when Shannon ran away, I was
16 away on military duty.

17 Q Do you recall that that was in fact in January of
18 2007?

19 A I do not remember the date.

20 Q The event that you just described concerning going
21 to the O'Connor residence, did that occur before or after the
22 police came to your house?

23 A I believe it was before.

24 Q When did you go into military duty?

25 A I go so many different times, I can't -- I don't

1 know. When did I join the military, is that the question
2 you're asking, or when did I leave for that particular one?

3 Q I'll rephrase my question. My understanding is
4 that in January of 2007 that when the police came to your
5 home, you weren't at home because you were at military duty?

6 A Yes, I was.

7 Q How long did that military leave from your home
8 last?

9 A I believe it was three weeks.

10 Q When did it begin and when did it end?

11 A I don't -- I don't know the exact dates. I do not.

12 Q I've put Exhibit 50 on the screen. I'm trying to
13 figure out how you parked your car. Did you park your car
14 right along the curb or did you park your car facing to the
15 back of the property?

16 A Right along the curb.

17 Q As you look at Exhibit 50, that's looking kind of
18 at the front left part of the house from the street?

19 A Correct.

20 Q There was a driveway on the property, am I correct?

21 A I don't know if there was a driveway or not. We
22 never parked in the driveway. We always parked on the curb,
23 basically right where this picture is taken from.

24 Q So you had been to this residence on occasions
25 before and after this event?

1 A I can't say after. I know before, because I've
2 dropped Shannon off and I've picked my daughter up.

3 Q How many times have you done that?

4 A I don't know. A few. A couple. One or two.

5 Q What school was your daughter attending at this
6 time?

7 A Stanford J. Gibson.

8 Q Not the Perry Brown school?

9 A I'm sorry. You're correct. That is Perry Brown.
10 They've been switching those two around. She started at
11 Stanford, then they went to Perry Brown, or it actually was
12 Perry Brown.

13 Q When you came to the property on the day that
14 you're talking about, did you see that lights were on
15 downstairs and upstairs?

16 A I have no clue.

17 Q When you had dropped Shannon off before, had you
18 gone to Shannon's apartment?

19 A No. I drove to the house, she got out, and I
20 waited for her to get to the door and go in before we would
21 leave.

22 Q So you saw which door she entered before?

23 A Yes. But I cannot recall which one. It was one of
24 the first two on the left-hand side right here. D-1 or D-2.

25 Q When you pulled up on the date in question, the

1 date you got out of the vehicle with your daughter -- and as
2 I understand it, as you came to the house you passed -- as
3 you're looking at the front of the house from the right, you
4 passed across the front of the house and parked on the left
5 side of the house as you're standing on the street looking at
6 it?

7 A Yes.

8 Q Do you know whether Linda O'Connor had a car?

9 A I don't know.

10 Q Well, when you were there on the date that you got
11 out of your vehicle, you eventually worked your way around to
12 the back of the house to that landing where you had the
13 conversation with Shannon, am I correct?

14 A Not -- well, I don't consider it the back of the
15 house because it's still on the side.

16 Q When you were standing on the landing having a
17 conversation with Shannon, could you see the garages out
18 back?

19 A I never looked at the garages.

20 Q You weren't aware that there were garages back
21 there?

22 A I see the pictures with the garages, but I never
23 noticed the garages.

24 Q Were there any vehicles parked back there when you
25 had this conversation with Shannon O'Connor?

James Parmalee - Cross

1391

1 A I do not know. I did not see any -- I didn't see
2 any.

3 Q You don't remember seeing a red car there, am I
4 correct?

5 A Correct.

6 Q What day of the week did this event occur?

7 A It was either a Thursday or a Friday.

8 Q About what time of day was it?

9 A 4:00, my best guess.

10 Q 4 PM?

11 A Yes. Because it was definitely after school
12 because my daughter was home.

13 Q Where were you coming from?

14 A My house.

15 Q Where were you going to?

16 A We were going to the store after we left their
17 house.

18 Q You're aware generally of the charges in this case,
19 am I correct?

20 A Kind of. I haven't really followed it so --

21 Q Did you speak with anybody in preparation for
22 coming here to testify?

23 A I spoke with the investigators and I spoke to --
24 sorry, I forgot your name.

25 MR. LOVRIC: Me?

James Parmalee - Cross

1392

1 MISS PEEBLES: Mr. Lovric.

2 Q Who's raising his hand?

3 A Yes, that was it.

4 Q Did you speak to anybody about this matter?

5 A Not that I know of. Not that I can recall.

6 Q Do you see Linda O'Connor sitting here?

7 A Yes, I do.

8 Q Have you been informed generally of the nature of
9 the charges against Linda O'Connor?

10 A Not formally, that I just -- just from the
11 subpoena, you know, and some headlines I've seen, but I don't
12 clearly follow the news.

13 Q You understand, generally speaking, what those
14 charges are?

15 A Yes.

16 Q Now, as I understand your testimony, the day that
17 you went there with your daughter, you went up and went into
18 Linda's apartment first?

19 A We didn't go into any of the apartments. We
20 knocked on the door and she came out.

21 Q She came out onto the porch?

22 A Right into the opening of the door. I don't think
23 she came out on the porch. She was in the doorway.

24 Q She was on the other side of the doorway, you were
25 outside?

James Parmalee - Cross

1393

1 A Yes.

2 Q Did she seem nervous to you?

3 A Not that I can recall.

4 Q She just said, yeah, you can go see Shannon around
5 that way?

6 A I don't remember the exact conversation. I do
7 recall she told us she was in the back doorway or upstairs.
8 We had to go up to that door.

9 Q The gist of it was, if you want to go speak with
10 Shannon, just go help yourselves?

11 A Yes.

12 Q It took 15 to 30 seconds from the time you first
13 knocked to the time that Shannon came down, am I correct?

14 A I knocked twice. So yes.

15 Q My question had to do with the time frames.

16 A To the best of my recollection it was a few -- 15,
17 20, 30 seconds or so, yes.

18 Q You spoke with Shannon on the landing?

19 A Correct.

20 Q Was Shannon outside the doorway and standing on the
21 landing?

22 A Yes, she was.

23 Q And that conversation lasted two to four minutes?

24 A Two to four minutes.

25 Q How did the conversation end?

1 A I believe she said that she'd be back in school on
2 Monday.

3 Q And what did you and your daughter do?

4 A We said okay, we'd see you later, got in the
5 vehicle and left.

6 Q When you said good-bye, all three of you were
7 standing up on the landing?

8 A I believe so. I may have been standing on the
9 second step down so there was enough room, but all three of
10 us were there.

11 Q And so when you said good-bye to Shannon, you came
12 down the steps from the landing, am I correct?

13 A I believe so, yes.

14 Q And your daughter came down the steps from the
15 landing, am I correct?

16 A Correct.

17 Q Did Shannon come down the steps from the landing?

18 A I don't recall.

19 Q You had to kind of walk around the side of the
20 house to get back to your vehicle, am I correct?

21 A We followed the concrete walkway, yes.

22 Q And you kind of had to walk past the entrance to
23 Linda's apartment that you'd already been to and left, am I
24 correct?

25 A Correct.

James Parmalee - Cross

1395

1 Q Do you remember that Shannon came with you and
2 walked up the entrance to Linda's apartment and went inside
3 there?

4 A I really don't remember. She may have. I don't
5 know.

6 MR. FISCHER: Those are all my questions.
7 Thank you.

8 THE COURT: Miss Peebles.

9 MISS PEEBLES: I have no questions for this
10 witness.

11 THE COURT: Mr. Lovric.

12 MR. LOVRIC: Just one question.

13 REDIRECT EXAMINATION

14 BY MR. LOVRIC:

15 Q The event that caused you and your daughter to go
16 to see Shannon was she had been out of school for a period of
17 time?

18 A Correct.

19 Q Okay.

20 MR. LOVRIC: That's all.

21 THE COURT: Mr. Fischer.

22 MR. FISCHER: Excuse me. Nothing further.
23 Thank you.

24 THE COURT: Miss Peebles.

25 MISS PEEBLES: Nothing.

James Parmalee - Redirect

1396

1 THE COURT: Thank you, Mr. Parmalee. You may
2 step down, sir.

3 (Witness excused)

4 MR. LOVRIC: The next witness will be
5 Investigator Richard Berry.

6 THE CLERK: Please state your full name.

7 THE WITNESS: Richard C. Berry.
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James Parmalee - Redirect

1397

1 R I C H A R D C. B E R R Y, having been called as a
2 witness, being duly sworn, testified as follows:

3 THE COURT: Okay, Mr. Lovric.

4 DIRECT EXAMINATION

5 BY MR. LOVRIC:

6 Q Good afternoon, Investigator Berry.

7 A Good afternoon.

8 Q Could you, for the members of the jury, tell them
9 your full name again and tell us where you work.

10 A Richard Berry. I'm with the New York State Police.
11 I'm an investigator for the past 14 years.

12 Q And how long have you been with the New York State
13 Police?

14 A Going on 15 years.

15 Q And in terms of your most current assignment as an
16 investigator, can you just tell the members of the jury a
17 little bit about, generally speaking, what kind of work do
18 you do and what kind of matters do you work on?

19 A I work with the major crimes unit. We work violent
20 crimes. Typically I'll analyze phone records, third-party
21 records, that type of information.

22 Q And in connection with your work as an
23 investigator, among the other matters that you work on, have
24 you also come to be someone that reviews and obtains
25 telephone records and deciphers or extracts information out

Richard C. Berry - Direct

1398

1 of various kinds of telephone records?

2 A Yes, I do.

3 Q And Investigator Berry, I'd like to talk a little
4 bit about a matter dealing with Linda O'Connor and Dean Sacco
5 in connection with this case. Did you at some point become
6 an investigator that worked on some matters dealing with this
7 case?

8 A Yes, I did.

9 Q Okay. Approximately, just a rough approximation,
10 approximately when was it that you came to assist in this
11 matter?

12 A I believe it was beginning of the year. Sometime
13 in January.

14 Q Of this current year?

15 A Yes.

16 Q And in addition to yourself, were there other
17 investigators that were also working on this case at the time
18 that you became involved?

19 A Yes, there was.

20 Q Now, in assisting in this investigation in this
21 case, did you take part in every single aspect of this case?

22 A No, I did not.

23 Q Okay. Did you go out on every single search
24 warrant that was executed in this case?

25 A No.

Richard C. Berry - Direct

1399

1 Q Okay. Is it fair to say that you assisted as to
2 some things but you did not either have involvement or even
3 have knowledge of all the various aspects of this case?

4 A That would be correct.

5 Q Now, initially, I would like to talk to you a
6 little bit about the execution of a search warrant at 45 Fair
7 Street in Norwich, New York. Were you actually present at
8 the time that the search warrant was conducted at that
9 location?

10 A Yes.

11 Q And were there also other investigators or other
12 law enforcement persons that --

13 A Yes.

14 Q -- that were helping out in that search warrant?

15 A Right.

16 Q Did you also assist and help in searching the
17 premises and the garage storage areas?

18 A Yes, I did.

19 Q And I'd like to show you what's been marked as
20 Government Exhibit Number 60 for identification.

21 MISS PEEBLES: Your Honor, may we have a
22 side-bar?

23 THE COURT: Sure.

24 (At the bench)

25 MISS PEEBLES: Judge, I've never seen this

Richard C. Berry - Direct

1400

1 letter so I need time to read it.

2 THE COURT: Do you want to take a couple of
3 minutes?

4 MISS PEEBLES: Yes.

5 THE COURT: Take a short break, ladies and
6 gentlemen.

7 (Jury excused)

8 MISS PEEBLES: I think I've read everything.
9 I've never seen this before.

10 MR. LOVRIC: That was also all the stuff when
11 you looked at -- when you came down, that was also in the
12 search warrant materials that were taken out of 45 Fair
13 Street.

14 MISS PEEBLES: I'm telling you right now, I
15 never saw this. I need to read it. I'm not clear I ever got
16 this, so I'm going to read it right now.

17 MR. LOVRIC: I just wanted to be clear, it's
18 all the materials that were made available to the defense,
19 and you guys came over and looked at everything.

20 MISS PEEBLES: I know I did.

21 MR. LOVRIC: I want to make it clear, it was
22 on the record, that was a part of everything that was there.

23 (Jury present)

24 THE COURT: You can identify that Government's
25 60. We can have it in evidence.

Richard C. Berry - Direct

1401

1 BY MR. LOVRIC:

2 Q Investigator Berry, if you can look at Government's
3 60, and do you recognize what that is?

4 A Yes, I do.

5 Q What is that?

6 A This was a letter that was found at the 45 Fair
7 Street residence in one of the -- it was a smaller shed type
8 in the back of the building. There was like three garages
9 and a smaller shed in the middle.

10 Q Is that something you were present when it was
11 recovered at that search location?

12 A Yes.

13 MR. LOVRIC: I offer Government 60 into
14 evidence.

15 THE COURT: No objection, I understand.

16 MISS PEEBLES: No objection.

17 MR. FISCHER: No objection.

18 THE COURT: All right. We'll receive
19 Government's 60 in evidence.

20 BY MR. LOVRIC:

21 Q Investigator Berry, Government 60 on the screen is
22 the letter that was found at -- during the course of that
23 search warrant, and it reads, it's addressed to a person by
24 the name of Ray?

25 A Yes.

Richard C. Berry - Direct

1402

1 Q And then at the very end of the second page does it
2 have closure saying, "Well, good night, Bubbles," smiley
3 face, and "I love you," and signed L-I-N, at least what can
4 be made out as far as a signature?

5 A Right.

6 Q And if I can read paragraph 2, it states, "I did a
7 lot of thinking on the way home, and to sit down and write
8 all of my grievances on a piece of paper probably will not
9 work out in court. I will go into court humbly and apologize
10 to the court for teaching Shannon how to lie, sneak and how
11 to go against Social Services rules." And then it reads on
12 further, "However, I will bring up the fact that I cannot
13 enhance my parenting skills with Shannon if I'm not allowed
14 to talk to her about her true feelings on you as well as
15 putting our family back together." And it goes on, is that
16 correct?

17 A Correct.

18 Q Now, the top right-hand corner there's a date, 10/,
19 and can you make out the middle number or not?

20 A It's either 24 or 14.

21 Q And then the last part appears as 07?

22 A Correct.

23 Q Now, Investigator Berry, at some point in
24 connection with this investigation, did you examine and look
25 at a variety of telephone records affiliated with this case?

Richard C. Berry - Direct

1403

1 A Yes, I did.

2 Q Okay. What I'd like to do now is -- I'd like to
3 show you Government's Exhibits 80 and 81, and I'll ask you a
4 couple of questions about those.

5 Investigator Berry, if you can look at Government
6 Exhibit 80 first, and if you can tell us, what do you
7 recognize that as, if you recognize it?

8 A These are T-Mobile cellphone records for Dean
9 Sacco.

10 Q And did you have a chance to obtain those records
11 from the T-Mobile cellular telephone company and also to
12 review those records?

13 A Yes.

14 Q And then if you could look at Exhibit Number 81.
15 What is that, if you recognize it?

16 A These are TracFone records for (607)226-6539.

17 Q During the course of this investigation did you
18 learn that that phone was at one point utilized by Shannon
19 O'Connor?

20 A Yes.

21 Q And did you also obtain those records from the
22 telephone company called TracFone?

23 A Yes, I did.

24 Q Did you also have the opportunity to review those
25 records?

Richard C. Berry - Direct

1404

1 A Yes.

2 MR. LOVRIC: Your Honor, I would offer Exhibit
3 80 and 81 into evidence.

4 MISS PEEBLES: No objection.

5 MR. FISCHER: Your Honor, may I have a brief
6 voir dire, please?

7 THE COURT: Sure.

8 VOIR DIRE EXAMINATION

9 BY MR. FISCHER:

10 Q Sir, those are only portions of telephone records
11 that you've had access to, am I correct?

12 A These were -- are you asking for 80 or 81 or both?

13 Q Let's start with 80.

14 A This is all the available phone, cellphone records
15 for Mr. Sacco's cellphone.

16 Q That shows incoming phone calls and outgoing phone
17 calls?

18 A Yes, it does.

19 Q Do you know whether T-Mobile provided cellphone
20 service that could be accessed from the Norwich area around
21 45 Fair Street?

22 A Do I know if T-Mobile -- all cellphone companies
23 can roam off different cell companies towers?

24 Q Do you know whether T-Mobile could be used while
25 the phone was -- T-Mobile phone was in Norwich?

Richard C. Berry - Direct

1405

1 A Could it be used?

2 Q Yes.

3 A Yes.

4 Q And what's the basis for that information?

5 A The basis for that information is my experience and
6 knowledge with cellphones, that you can use a cellphone from
7 a different company being that -- with your roaming charges
8 on cellphones come from like -- TracFone does not -- is not
9 proprietary. TracFone does not own its own cell towers.
10 They use other carriers' cell towers.

11 Q There are contractual relationships between the
12 various cellphone providers?

13 A Yes.

14 Q You're not aware who and what contracts with whom
15 and when, am I correct?

16 A No.

17 Q With respect to Exhibit 81, is that just a portion
18 of the records?

19 A These were all the records that TracFone had
20 available for the time period we requested.

21 Q And what was that time period?

22 A That was 8/1 of '06 to 8/31 of '07.

23 Q All right.

24 MR. FISCHER: Your Honor, with respect to the
25 first exhibit, Exhibit 80, I'm not sure there's an adequate

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1 foundation, frankly, to show really what the document is
2 intended to prove.

3 And with respect to Exhibit 81, I don't have
4 any objection.

5 THE COURT: All right. First of all, I'll
6 receive Government's 81 in evidence. I take it, Miss
7 Peebles, you have no objection?

8 MISS PEEBLES: No objection.

9 THE COURT: Are you objecting to relevancy or
10 are you saying that you're not quite sure why these records
11 are being introduced?

12 MR. FISCHER: Well, I think the latter, and
13 some foundational objection as well, your Honor.

14 THE COURT: Well, I guess if we can find out
15 where the witness got the records from and how he got them,
16 what they contain. Mr. Lovric?

17 MR. LOVRIC: I'm not quite sure what the
18 objection is, Judge. I'm a little confused.

19 THE COURT: He wants some foundational
20 information as to where these records came from. Did they
21 magically appear in the witness' hands one day?

22 BY MR. LOVRIC:

23 Q Investigator Berry, looking at Exhibit 80, T-Mobile
24 records, were those records actually subpoenaed from the
25 telephone company?

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1 A Yes, they were subpoenaed.

2 Q And all those records that you have in Exhibit 80,
3 are all of those records the records that the phone company,
4 T-Mobile, sent in compliance with that subpoena?

5 A Yes.

6 Q And the subscriber for the T-Mobile records,
7 Exhibit 80, that subscriber is who?

8 A Dean M. Sacco.

9 Q Is there also an address for the subscriber that
10 those records relate to?

11 A Yes. It's 930 Newark Ave., Floor 2, Jersey City,
12 New Jersey 07306.

13 Q And at the time that you obtained those records,
14 Exhibit 80, from T-Mobile, were you familiar with that phone
15 number for those records as having been a number that was
16 called by the Norwich PD in connection with a recorded
17 telephone call?

18 A Yes.

19 Q And are those the records that relate to that
20 telephone number that was called by the Norwich PD in making
21 calls that they tape recorded?

22 A Yes.

23 MR. LOVRIC: I would offer Government's
24 Exhibit 80, Judge.

25 THE COURT: Any further objection?

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1 MR. FISCHER: No, your Honor. Thank you.

2 THE COURT: All right. We'll receive
3 Government's 80 in evidence.

4 BY MR. LOVRIC:

5 Q Investigator Berry, Exhibit 80 we just spoke of.
6 The subscriber information, can you just for the record read
7 the phone number that Exhibit 80 relates to?

8 A It's cellphone number (908)906-7917.

9 Q And you indicated that those are records for a Dean
10 Sacco's cellular telephone, is that correct?

11 A Correct.

12 Q Just so we're clear, those are not records of a
13 hard line phone, a phone that you might find plugged into a
14 wall in a building or an office, is that correct?

15 A Correct.

16 Q And with respect to Exhibit Number 81, you
17 indicated that those are records -- and you read the phone
18 number earlier but -- records for a TracFone, is that
19 correct?

20 A Correct.

21 Q And can you just very briefly just describe what a
22 TracFone is.

23 A TracFone is a prepaid service. You can go to
24 Wal-Mart, K-Mart and buy off the shelf a phone and pay for
25 how many minutes you want to use it for.

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1 Q Okay. And when you -- when a person does that, and
2 they go to a Wal-Mart or a K-Mart and they purchase a
3 TracFone, do they also have to purchase some type of card
4 that puts minutes on that phone, being how many minutes
5 they're buying?

6 A Typically it comes with something and then you buy
7 additional minutes.

8 Q Okay. And when an individual does that for a
9 TracFone, do they have to sign any kind of a contract with
10 the TracFone company or anything like that?

11 A No.

12 Q Do they even have to provide their name or address
13 or anything of that sort?

14 A No, they don't.

15 Q And how is it that the TracFone itself and the
16 minutes that are used -- how does that work? How does the
17 person get minutes on the phone so they can speak on that
18 phone?

19 A Typically there's a number you can dial from the
20 phone or 800 number you can dial to add minutes with the
21 prepaid card that you purchased at Wal-Mart, K-Mart or
22 something like that.

23 Q Okay. And --

24 A And then you add the minutes on to the phone and
25 then you're allowed to use that phone until the minutes are

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1 gone, and when it gets to the end of your minutes, it will
2 notify you that you have five minutes left or whatever. Each
3 phone company's different.

4 Q Okay. And a TracFone user, do they receive some
5 kind of a bill or statement every month from the phone
6 company?

7 A No.

8 Q Why is that?

9 A Because this is prepaid. Most people buy these
10 type of phones because they don't want to get into dealing
11 with contracts and stuff like that. It's for their leisure
12 for whatever they like to use it for.

13 Q So you get no bill because you buy this card ahead
14 of time and put these minutes on the phone?

15 A Right.

16 Q Now -- and this particular TracFone with the number
17 (607)226-6539, did you come to learn that was a TracFone that
18 Shannon O'Connor at least utilized during a time period that
19 the Norwich PD made calls to Mr. Dean Sacco?

20 A Yes.

21 Q And I'd like to show you next Exhibit Number 82.
22 Investigator Berry, if you can look at Exhibit
23 Number 82, and do you recognize what that is?

24 A This is a summary chart of phone calls between
25 Exhibits 81 and 82, particular calls.

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1 Q Okay. Just several particularized calls that are
2 found in Exhibits 80 and 81?

3 A Right.

4 Q And who prepared Exhibit Number 82?

5 A I did.

6 Q And is the information that's contained in Exhibit
7 82, is it also contained somewhere in those Exhibits 80 and
8 81?

9 A Yes.

10 MR. LOVRIC: Your Honor, I would offer Exhibit
11 Number 82 into evidence.

12 MR. FISCHER: No objection.

13 MISS PEEBLES: No objection.

14 THE COURT: Okay. We'll receive Government's
15 82 in evidence.

16 BY MR. LOVRIC:

17 Q Investigator Berry, I'm going to put on the screen
18 Government Exhibit Number 82. Can you see that exhibit,
19 Investigator Berry?

20 A Yes, sir.

21 Q And Exhibit 82 you indicated summarizes just
22 several calls found in the Exhibits 80 and 81, is that
23 correct?

24 A Yes, sir.

25 Q Okay. I take it Exhibits 80 especially and 81 to

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1 some lesser degree contain numerous phone call information,
2 date, time, duration, things of that nature?

3 A Yes.

4 Q Okay. And looking at Exhibit 82 now, I'd like to
5 point out and ask you, on the far left of that exhibit
6 there's a column called Target Phone. What does that mean,
7 Target Phone and the number listed there?

8 A When I prepared the information, we have to put
9 into the database phone calls related to a specific phone.

10 Q Okay.

11 A And that would have been Mr. Sacco's phone.

12 Q The (908)906-7917.

13 A Correct.

14 Q So that number, is that the -- is that the phone
15 number for the records that are contained in Government's
16 Exhibit 80?

17 A Yes.

18 Q Okay. And target name is an indicator for the
19 phone who is either subscribed to or user?

20 A Correct.

21 Q And then the date signifies what?

22 A The date the call was made.

23 Q And time indicating the time?

24 A Correct.

25 Q And then under Number Dialed, does that indicate

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1 whether that was an outgoing or incoming phone call?

2 A Incoming will say incoming or IN and then the
3 number. It's an incoming call from the Norwich Police
4 Department.

5 Q Okay. So if that column Number Dialed does not say
6 In or Incoming, what does that mean then?

7 A That it was an outgoing call from the target phone.

8 Q And dialed name, is that the phone that either
9 called the target or got a call from the target, who that
10 phone belonged to?

11 A Correct.

12 Q And I take it duration is the approximate duration
13 of the phone call?

14 A Right, in minutes.

15 Q If I can have you indicate for line number 1 there,
16 that information indicates what occurred on March 14 of 2007?

17 A That at 5:08 PM the Norwich Police Department
18 called Mr. Sacco's cellphone for 12 minutes.

19 Q Okay. And incoming means it was an incoming call
20 to Mr. Sacco's phone?

21 A Right.

22 Q And then the second line, what does that second
23 line -- what information does that convey?

24 A It shows that 5:43 PM on the 14th of March, 2007,
25 that Dean Sacco called (607)336-7075, it's a landline phone,

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1 to Linda O'Connor, for six minutes.

2 Q Okay. So that's a call that went from Mr. Sacco's
3 cellphone to Linda O'Connor's landline phone, is that
4 correct?

5 A Correct.

6 Q And that landline phone, 336-7075, at that time,
7 that being March 14 of 2007, where was that phone located,
8 that hard line?

9 A Forty-five Fair Street in Norwich.

10 Q And so that was a call for about approximately six
11 minutes?

12 A Correct.

13 Q And that occurred on the same date just shortly
14 after the first call was placed by Norwich PD to Dean Sacco?

15 A Correct.

16 Q And then the third line, March 14, 2007, still the
17 same day. What does that third line show, what information?

18 A 5:48 PM on March 14, 2007, Dean Sacco's cellphone
19 receives a call from the Norwich Police, 15-minute phone
20 call.

21 Q Okay. So, those three calls that we just talked
22 about all occurred on that same date, March 14?

23 A Correct.

24 Q And all between 5:08 PM and approximately 5:48 PM?

25 A Correct.

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1 Q And at the time when you were examining these
2 telephone records contained in Government's Exhibit 80 and
3 81, did you have information from other investigators about
4 recorded calls placed from Norwich PD and Shannon O'Connor's
5 speaking to Dean Sacco on March 14 of 2007?

6 A Yes. I was advised by other investigators.

7 Q Okay. And these were the -- those were the phone
8 calls that you were looking for in these records, I take it?

9 A Correct.

10 Q Or some of the calls that you were looking for?

11 A Right.

12 Q And then if you could go to line 4, what does that
13 line -- what information does that convey?

14 A On March 15, 2007 at 3:19 PM, Dean Sacco receives
15 an incoming call from Shannon O'Connor for 11 minutes.

16 Q And the phone that Dean Sacco's phone receives a
17 call from, that's from that TracFone that you just spoke of
18 in Exhibit Number 81?

19 A Yes, sir.

20 Q And that call was approximately 11 minutes?

21 A Correct.

22 Q And then what does the fifth line show?

23 A On March 15, 2007, 3:30 PM, Dean Sacco's cellphone
24 calls Shannon O'Connor's cellphone for seven minutes.

25 Q Still the same date, March 15?

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1 A Correct.

2 Q And then what does the sixth line -- what
3 information does that convey?

4 A That shows Shannon O'Connor's cellphone on
5 March 15, 2007 at 3:38 PM receives an incoming call from
6 Glenwood Office Furniture for six minutes.

7 Q Okay. And at the time that you're examining these
8 records, were you aware and provided the sequence of calls
9 made on March 14 and March 15 from the Norwich PD or to and
10 from Shannon's cellphone in connection with her making
11 recorded calls to Mr. Sacco?

12 A Yes.

13 Q Now, in looking at line 2 -- and excuse me. In
14 looking at lines 1, 2, and 3 of Exhibit 82, line 1 shows that
15 the time placement of the call was 5:08 for 12 minutes, is
16 that right?

17 A Correct.

18 Q So that would take -- that would take us up to what
19 approximately, what real time when that call ended?

20 A 5:20.

21 Q And then 23 minutes later, line 2 indicates that
22 the Dean Sacco cellphone called Linda O'Connor's home phone
23 in Norwich?

24 A Correct.

25 Q And that lasted for a six-minute conversation, is

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1 that right?

2 A Correct.

3 Q And six minutes approximately from 5:43 puts us
4 right at 5:49, is that correct?

5 A Correct.

6 Q And then we see at 5:48 a call from Norwich PD
7 incoming to Dean Sacco on his cellphone, is that correct?

8 A Correct.

9 Q Okay. Now I just want to have you explain -- we
10 see 5:43 as the beginning of the second call going for 6
11 minutes and then 5:48 the initiation of a third call. There
12 appears to be overlap of one minute there.

13 A Right.

14 Q Are you familiar with how phone companies stamp
15 times in terms of their records?

16 A Not all phone companies use the same time format
17 and not all phone companies will start the clock when the
18 phone rings. Some phone companies, when you pick up the hand
19 set and start to dial, the time will start. Other phone
20 companies, you pick up the hand set and once you make the
21 connection, the time will set.

22 Q Okay. And then what about rounding -- what if you
23 hang up at 5:48 and 20 seconds? How do phone companies -- do
24 they give you the minute back?

25 A No, they always round up.

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1 Q So they round up. So if you end the call at 5:48
2 and 1 second, they record that as ending at what time?

3 A 5:49.

4 Q Okay. Investigator Berry, I'd next like to show
5 you -- I'm going to show you three exhibits: Government's
6 Exhibit Number 83, 84, and 85.

7 MR. FISCHER: Thank you, Mr. Lovric.

8 Q Investigator Berry, if I can have you -- we're
9 going to start. If you can take a look at Government Exhibit
10 Number 83. And looking at Exhibit 83, do you recognize,
11 generally speaking, what that is?

12 A Yes, sir.

13 Q What is that?

14 A These are the home phone records for (607)336-7075,
15 which was -- the subscriber was Linda O'Connor at 45 Fair
16 Street, Apartment 1, Norwich, New York.

17 Q And in connection with this investigation, did you
18 obtain records for a particular general time frame?

19 A Yes.

20 Q Approximately. And what time frame approximately
21 are we talking about?

22 A August of 2006 through March -- no. Through May of
23 2007 -- no, June of 2007.

24 Q Okay. And looking at Exhibit 84, do you recognize
25 what kind of records those are?

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1 A Yes. These are TracFone records.

2 Q Okay. For what number are they TracFone records?

3 A (607)372-9820.

4 Q And in connection with this investigation, were you
5 provided information that that was a TracFone utilized by
6 Linda O'Connor?

7 A Yes, sir.

8 Q And do those records also reflect whatever records
9 were available by TracFone for this approximate time frame?

10 A Yes.

11 Q And then looking at Exhibit Number 85, what are
12 those records of?

13 A These are hard line phone records for Glenwood
14 Office Environment, Inc. and there are several different
15 phone numbers that go with this.

16 Q Okay. The business had several lines or numbers
17 that came in?

18 A Yes.

19 Q And just for record, what's the phone number for
20 those records?

21 A The main business number was (201)792-7300.

22 Q And during the course of the investigation, did you
23 become aware that Mr. Sacco worked at some time at that
24 Glenwood Furniture?

25 A Yes.

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1 Q And are those records records during the time frame
2 that we just identified that was in question that you -- or a
3 portion of that time, I should say?

4 A Yes, it was.

5 Q Not necessarily the entire time. But at least a
6 portion of the time frame?

7 A Right.

8 MR. LOVRIC: Your Honor, I would offer Exhibit
9 83, 84, and 85.

10 MR. FISCHER: Your Honor, may I just briefly
11 voir dire?

12 THE COURT: Sure.

13 VOIR DIRE EXAMINATION

14 BY MR. FISCHER:

15 Q Sir, are those all of the records that you
16 requested concerning those phone numbers?

17 A All of the records -- well, I'm sure there's other
18 types of records. Now if you're speaking in particular for
19 the home phone of Linda O'Connor, the 7075, that was the
20 records but they do not provide incoming calls. So the
21 records only reflect outgoing calls.

22 Q I guess my question is this: You requested records
23 from these phone providers, correct?

24 A Yes.

25 Q And are the documents that you have before you all

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1 of the records that you received in response to those
2 requests?

3 A Yes.

4 MR. FISCHER: Those are all my questions. I
5 have no objection, Judge. Thank you.

6 MISS PEEBLES: No objection.

7 THE COURT: Okay. We'll receive Government's
8 83, 84, and 85 in evidence.

9 BY MR. LOVRIC:

10 Q Investigator Berry, I'm going to show you Exhibit
11 86, but before I do that, I want to confirm again, Exhibit 83
12 is what kind of a phone and who's the subscriber of that
13 phone?

14 A It's a landline phone at a residence, 45 Fair
15 Street. The subscriber was Linda O'Connor.

16 Q Okay. And then Exhibit 84, what kind of a phone is
17 that and who --

18 A That's a TracFone, one of the prepaid cellphones,
19 for Linda O'Connor.

20 Q Okay. Same kind of TracFone that you spoke of
21 earlier for Exhibit Number 81 with respect to a Shannon
22 O'Connor TracFone?

23 A Yes.

24 Q And then Exhibit 85 is what kind of telephone?

25 A That's a hard line, landline phone for a business.

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1 Q Okay. Now, in connection with those three
2 exhibits, did you prepare a summary of the contacts between
3 telephones that were either subscribed or utilized by Linda
4 O'Connor and Dean Sacco?

5 A Yes.

6 Q Okay. I'd like to show you Government's Exhibit
7 86.

8 MISS PEEBLES: Can I have a quick voir dire,
9 your Honor?

10 THE COURT: Sure.

11 VOIR DIRE EXAMINATION

12 BY MISS PEEBLES:

13 Q With regard to the landline, the hard line at 45
14 Fair Street, during the time period for which you obtained
15 the record, Shannon O'Connor was also residing with Linda
16 O'Connor, and you knew that, right?

17 A What was the time frame? I know what time she was
18 there and time frame she was not there.

19 Q Between August of '06 and February 26, '07, Shannon
20 O'Connor resided at 45 Fair Street and you were aware of
21 that, correct?

22 A I'm not a hundred percent certain.

23 Q So you don't know who resided at 45 Fair Street?

24 A I know that Shannon O'Connor was there at some
25 point. The exact time frame, I don't know.

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1 Q Well, in preparation of these records, is it fair
2 to say that during the time period between August and
3 February of '07, August of '06 and February of '07, any calls
4 that were outgoing to Mr. Sacco could have been dialed by
5 Shannon O'Connor or Linda O'Connor during that time period,
6 is that fair to say?

7 A That's fair to say.

8 Q But that's not indicated on this chart; you only
9 reference Linda O'Connor. Is that what this chart reflects?

10 A Yes.

11 MISS PEEBLES: No objection.

12 THE COURT: Mr. Fischer.

13 MR. FISCHER: No objection.

14 THE COURT: Receive Government's 86 in
15 evidence.

16 BY MR. LOVRIC:

17 Q Investigator Berry, I'll put on the screen Exhibit
18 Number 86. Can you see that?

19 A Yes, sir.

20 Q Okay. And just to orient the jurors, if I can
21 start with the -- let me zoom that in a little bit. Looking
22 at Exhibit 86, the first page, just to orient everyone. The
23 first column on the far left hand indicates -- states Target.
24 What phone or phone number is represented under the Target
25 column?

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1 A That's Dean Sacco's cellphone or Linda O'Connor's
2 cellphone.

3 Q Generically speaking, Target references what in
4 that whole column going down?

5 A Well, the three records. The exhibits that you
6 have listed here.

7 Q Okay. So it references one of the numbers that is
8 being called or else calling out?

9 A Right.

10 Q Okay. And then Target Name is the subscriber
11 associated with that phone, is that a fair statement?

12 A Yeah. The person associated with that phone.

13 Q And then Date and Time are self-explanatory.
14 Indicates the date, the approximate time of the phone
15 contact?

16 A Right. And the time is in military time. This is
17 done on a program that only accepts military time.

18 Q Okay. And for those not in the military time, 1400
19 hours would represent what time?

20 A Two PM.

21 Q Okay.

22 A The way I usually teach people how to do it is if
23 it's after 12 noon, if it's say 1 PM, you add 12 to it so it
24 would be 13, and you go all the way up to 11:00 PM, add 12,
25 that would be 23, 23, 00 is midnight, obviously, 01 would be

Richard C. Berry - Direct

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1 1 AM, 2 AM --

2 Q Correct. And then the number dialed, does that
3 indicate what number the target phone either dialed or what
4 number called the target phone?

5 A Right. It would be either an incoming call from
6 that number if it says in, or if it doesn't say in, it's an
7 outgoing call to that number.

8 Q And then the last column, Name, as far as who that
9 phone is either subscribed or associated to?

10 A Correct.

11 Q Okay. So, just by way of example, the first line,
12 okay, on that date, the first line, what phone, what phone
13 number or what phone is being called?

14 A Dean Sacco's cellphone is receiving an incoming
15 call from Linda O'Connor's cellphone at 2:08 PM.

16 Q Okay. And that's why there is that reference there
17 under number dialed?

18 A Correct.

19 Q Now, this summary chart, Government Exhibit 86,
20 does this multipage exhibit summarize contacts by the three
21 different phones in Government's Exhibits 83, 84, and 85?

22 A Yes.

23 Q And are each of the contacts between either Linda
24 O'Connor home phone or Linda O'Connor TracFone, and Sacco
25 business phone, summarized in this exhibit?

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1 A Yes.

2 Q Okay. Now, does 86 also include contact between
3 the Sacco T-Mobile cellular phone and any of the Linda
4 O'Connor phones that we just identified?

5 A Cellphone?

6 Q Yes.

7 A Yes.

8 Q Okay. So is it fair to say that Government Exhibit
9 86 summarizes all of the contacts between either a Dean Sacco
10 phone or a Linda O'Connor phone?

11 A Correct.

12 Q Now that Exhibit 86 actually provides the
13 information as to date, time, duration, and whether it's an
14 incoming or outgoing call, is that correct?

15 A Right.

16 Q I'd like to next show you Government Exhibit 87.

17 Investigator Berry, if you could look at Exhibit 87
18 and just tell us if you recognize that, what that is.

19 A Yeah. That's a summary of the three exhibits here.

20 Q Who created Exhibit Number 87?

21 A I did.

22 Q And Exhibit Number 87, does it summarize by raw
23 number the number of contacts between any of the phones that
24 were identified as being subscribed and used by Linda
25 O'Connor and any phones subscribed or used by Dean Sacco?

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1 A Yes, it does.

2 MR. LOVRIC: I would offer Government Exhibit
3 Number 87.

4 MR. FISCHER: Your Honor, I just had a
5 question as to when, what time frame.

6 THE COURT: Sure. You can ask him.

7 VOIR DIRE EXAMINATION

8 BY MR. FISCHER:

9 Q What time frame?

10 A That this was -- the document or summarizing the
11 records?

12 Q The summary, Exhibit 87 that's before you now, what
13 time frame or time frames is covered in that document?

14 A July of '06 until March of '07.

15 Q For all three summaries set forth in that, am I
16 correct?

17 A For all three of these phones but the Dean Sacco
18 cellphone.

19 MR. FISCHER: Thank you. I have no objection.

20 MISS PEEBLES: I have a couple questions,
21 Judge.

22 VOIR DIRE EXAMINATION

23 BY MISS PEEBLES:

24 Q When you say contacts, many of those contacts
25 between phones were less than a minute, is that fair to say?

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1 There are numbers that you counted there where it doesn't
2 appear there was actually a conversation?

3 A Well, they would either show a minute or more.

4 Q Right. But you count those in your total
5 tabulation?

6 A Yes.

7 Q You don't have the contacts on your sheet between
8 Shannon O'Connor's cellphone and Dean Sacco's cellphone, is
9 that correct?

10 A Correct.

11 MISS PEEBLES: No objection.

12 THE COURT: All right. Receive Government's
13 87 in evidence.

14 BY MR. LOVRIC:

15 Q Can I just have that for a moment?

16 And putting on the screen Exhibit Number 87,
17 Investigator Berry, can you read the first line and then I'll
18 just ask you a question about that?

19 A There are 111 contacts between Sacco's cell,
20 (908)906-7917, and Linda O'Connor's home number,
21 (607)336-7075.

22 Q And that's between July of '06 and March of '07?

23 A Correct.

24 Q When you say contacts, does that include,
25 regardless of which, which person's affiliated phone calls

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1 with which person?

2 A Right.

3 Q Then the second notation is 27 contacts between
4 Sacco cellphone and O'Connor cellphone. When you say
5 O'Connor cellphone, which cellphone is that?

6 A (607)372-9820.

7 Q Is that that O'Connor TracFone that you described
8 earlier?

9 A Yes. Exhibit 84.

10 Q And then the final notation is 9 contacts between
11 Sacco work number and Linda O'Connor home and/or cell number,
12 is that correct?

13 A Correct.

14 Q And that establishes how many contacts the Sacco
15 work phone called O'Connor or affiliated phones?

16 A Correct.

17 MR. LOVRIC: Those are all the questions I
18 have at this time, Judge.

19 THE COURT: Okay. Mr. Fischer.

20 MR. FISCHER: Thank you, your Honor.

21 CROSS-EXAMINATION

22 BY MR. FISCHER:

23 Q Sir, I'm Kelly Fischer. I represent Mr. Sacco.
24 The last summary that you just spoke about, and in fact any
25 of the summaries that you prepared, when it shows that

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1 there's a call to or from say Linda O'Connor's home land
2 phone, you don't know who at the O'Connor residence is making
3 that call or receiving that call, correct?

4 A Correct.

5 Q It could be that Shannon O'Connor is making that
6 phone call, am I correct?

7 A Could be.

8 Q And that is also true with respect to the TracFone
9 number registered to Linda O'Connor?

10 A Correct.

11 Q Do you know when -- what time frames that Shannon
12 O'Connor was residing not at 45 Fair Street but in fact was
13 residing with Renee Lang?

14 A I don't know that.

15 Q On voir dire I asked you some questions about
16 T-Mobile cellphone coverage in Norwich. Do you remember
17 that?

18 A Yes.

19 Q Is it your testimony that a T-Mobile phone,
20 cellphone in Mr. Sacco's name from August of 2006 through
21 March of 2007 had coverage where that phone could be used
22 while in Norwich?

23 A While in Norwich itself?

24 Q Yes.

25 A Particularly, I don't know that.

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1 Q Exhibit 60, the letter that was found in the shed,
2 are you familiar with that document?

3 A Yes. Yes.

4 Q Do you need to look at it again?

5 A No.

6 Q That appears to be a document created by Linda
7 O'Connor, am I correct?

8 A Appeared to be, yes.

9 Q This document was found when?

10 A The day we did the search warrant. I believe it
11 was March 24.

12 Q Of what year?

13 A This year.

14 Q And this document is dated either 10/14 or
15 10/24/2007, correct?

16 A I'd have to look at it again. I think that sounds
17 right.

18 Yeah. To me I would say 24, but it could be 14 of
19 2007.

20 Q So it appears the document wasn't created until mid
21 to late October, 2007, is that correct?

22 A That's when it's dated. I couldn't tell you when
23 it's created.

24 Q Mr. Sacco did not have access to that shed from at
25 least March 19, 2007, until now, am I correct?

Richard C. Berry - Cross

1432

1 A Correct.

2 Q He did not have access to that shed on or about
3 October 14 or 24, 2007, to the best of your knowledge, am I
4 correct?

5 A To the best of my knowledge, no.

6 MR. FISCHER: All right. Those are all the
7 questions. Thank you.

8 THE COURT: Okay. Miss Peebles.

9 CROSS-EXAMINATION

10 BY MISS PEEBLES:

11 Q Investigator Berry, did you count the number of
12 phone contacts between Shannon O'Connor's TracFone and Mr.
13 Sacco's, the phones associated with Mr. Sacco?

14 A Did I count them?

15 Q Yes.

16 A Roughly.

17 Q And how many did you come up with?

18 A I believe there was nine.

19 Q How about 13, does that sound about right?

20 A Well, on some of the records there's duplicates,
21 like the contacts between Shannon's cellphone and Mr. Sacco's
22 was on 12/30 of '06 and 11 of '07.

23 Q Right around New Year's?

24 A Right around New Year's.

25 Q I want you to go through and I want you to count

Richard C. Berry - Cross

1433

1 the number of phone calls out of 111 and tell the jury
2 approximately how many were one minute.

3 A From the summary chart?

4 Q From the summary chart. You said you compiled the
5 chart. You said there were 111 contacts.

6 A I don't have that in front of me. I think it was
7 like five pages.

8 Is this between all the phones?

9 Q All the phones. Well, you have the home phone
10 where it says 111 contacts. That's my question. Of those
11 111 calls that you tabulated, I want to know how many were
12 one minute, that duration indicates one minute.

13 A Okay. Seventeen on the first page. Twenty-three
14 on the second page. Sixteen on the third page. Seven on the
15 fourth page. Nineteen on the last page.

16 Q So 82 of the calls were a minute in duration if we
17 totaled it up?

18 A If you added it up.

19 Q Eighty-two out of 111. Now, let's talk about
20 March 14, the phone call to -- from Dean Sacco to Linda
21 O'Connor at 45 Fair Street. Now, on the other summary chart
22 that you did -- do you know which one I'm referring to?

23 A Okay. I think it's 82, maybe.

24 Q All right. Looking at the second call, March 14 at
25 5:43 --

Richard C. Berry - Cross

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1 A Right.

2 Q -- do you see that? Now, you were aware, because
3 you were part of the investigation, that the first phone call
4 from the Norwich Police Department was disconnected or
5 interrupted; you were aware of that?

6 A I was aware of that after the fact. Not then at
7 that time.

8 Q But you know?

9 A I became aware of that.

10 Q All right. And the phone call was interrupted and
11 was not recorded; you're aware of that, correct?

12 A Right.

13 Q And then it appears that Mr. Sacco attempted to
14 call Linda O'Connor after that phone call was disconnected,
15 is that what it looks like from the chart?

16 A From the chart, yeah, there was a call from --

17 Q Norwich Police Department and Mr. Sacco?

18 A Right. In between there, there were other calls.

19 Q I'm looking at 5:43.

20 A Just on the summary chart?

21 Q Just on the summary chart; that's what I'm talking
22 about. So it appears Mr. Sacco is trying to call Shannon
23 back after they had been disconnected at the Norwich Police
24 Department; was that your assessment after you listened to
25 the recording and heard what was said?

Richard C. Berry - Cross

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1 MR. LOVRIC: Objection. I don't believe that
2 that's an accurate statement of fact.

3 THE COURT: Well, she's asking the question.
4 Let's see what the answer is. Overruled.

5 A Would you repeat it, please.

6 Q Did you ever listen to the tapes that were recorded
7 between Mr. Sacco and Shannon O'Connor? Did you ever listen?

8 A All the tapes, no.

9 Q Did you listen to the March 14 recorded phone
10 conversation?

11 A Not the whole thing, no.

12 Q Did you listen to any of it?

13 A Some of it.

14 Q Did you listen to the beginning of it?

15 A I believe it was the beginning. I listened to a
16 few minutes of it.

17 Q Okay. So did you hear when Mr. Sacco said, I just
18 got off the phone with your mother, she says you're in foster
19 care? Do you remember hearing that part of it?

20 A I don't. I don't recall that, no.

21 Q So you prepared this chart but have you no idea in
22 what context these phone calls were made, is that what you're
23 saying? Is that what your testimony is?

24 A No.

25 Q Well, do you know in what context --

Richard C. Berry - Cross

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1 A We know there was a phone call, we would call it a
2 controlled phone call from Shannon O'Connor at the Norwich
3 Police --

4 Q Correct.

5 A -- to Mr. Sacco.

6 Q Correct.

7 A Okay. The phone call for some reason did not
8 record and they made another phone call 40 minutes later.

9 Q Correct. But there's a phone call in between those
10 two phone calls; that's what I'm saying. What you're saying,
11 you don't know in what context the phone call from Mr. Sacco
12 to Linda O'Connor was placed, is that what your testimony is?
13 That's what I'm asking.

14 A I don't know what context -- understand that
15 question.

16 Q Do you know for what reason Mr. Sacco was calling
17 Linda O'Connor during that time period?

18 A Do I know why he called her, no.

19 Q You didn't put it in context based on what you
20 heard on the first phone call on March 14? That's all I'm
21 asking.

22 A I put it in the summary chart chronologically as
23 the way things happened.

24 Q Exactly. And you didn't think about in what
25 context the call was made, is that your testimony? That's

Richard C. Berry - Cross

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1 all I'm asking.

2 A Well, your context could be different than my
3 context.

4 Q What is your context?

5 A That Mr. Sacco contacted Miss O'Connor for some
6 reason.

7 MISS PEEBLES: No further questions.

8 THE COURT: Mr. Lovric.

9 MR. LOVRIC: No other questions, Judge.

10 THE COURT: Mr. Fischer.

11 MR. FISCHER: Your Honor, if I may just follow
12 up on Miss Peebles' questions.

13 RECROSS-EXAMINATION

14 BY MR. FISCHER:

15 Q You're familiar with Shannon O'Connor's claims in
16 this case?

17 A Yes.

18 Q You're familiar with the dates she claimed certain
19 events occurred?

20 A Some of them, yes.

21 Q Did you undertake to match up phone calls from or
22 to Mr. Sacco's cellphone to see if they match or didn't match
23 with the dates that Shannon O'Connor alleged certain events
24 occurred?

25 A Yes.

Richard C. Berry - Recross

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1 Q When did you do that?

2 A When did I match them up?

3 Q Yes.

4 A Over the last several months.

5 Q For example, did you determine that on let's say
6 November 25 of 2006 there was no telephone call to or from
7 Dean Sacco's cellphone? Did you determine that?

8 A To who?

9 Q To or from anybody.

10 A I would have to look at these phone records.

11 Q Please do.

12 A They're not here.

13 Q I'll show you Exhibit 80.

14 A Thank you. The date again, sir, November?

15 Q Twenty-five, 2006.

16 A According to these records, there's no billable
17 calls that Mr. Sacco made or received on that date.

18 Q A billable call would have been a call to Linda's
19 landline?

20 A If you call a number and hang up in transit, say
21 before the answering machine comes in, if they don't have an
22 answering machine, if you dialed the number, you're not
23 billed, if you hang up before some type of answer, whether
24 it's an answering machine or gets routed somewhere else.

25 Q So if there was a telephone call between Mr.

Richard C. Berry - Recross

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1 Sacco's cellphone and Linda's landline on November 25, 2006
2 where there was actually a conversation, it would show up in
3 those records, wouldn't it?

4 A It would show in Mr. Sacco's records.

5 Q And there is no call on November 25 of 2006, am I
6 correct?

7 A Not in his records.

8 MR. FISCHER: Those are all the questions.

9 THE COURT: Miss Peebles?

10 MISS PEEBLES: Nothing further.

11 REDIRECT EXAMINATION

12 BY MR. LOVRIC:

13 Q Do you have any idea what November 25 has anything
14 to do with this case?

15 A No idea.

16 MR. LOVRIC: No other questions.

17 THE COURT: All right. Thank you,
18 Investigator Berry. You may step down, sir.

19 (Witness excused)

20 THE COURT: All right, ladies and gentlemen.
21 It's five after 5. Begin tomorrow morning at 9:30. Remind
22 you not to discuss the matter among yourselves, with anybody
23 else.

24 We'll see you tomorrow morning. I hope you
25 don't freeze to death.

Richard C. Berry - Redirect

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(Jury excused)

(Court stands adjourned)

C E R T I F I C A T I O N

I, VICKY A. THELEMAN, RPR, CRR, United States Court Reporter in and for the United States District Court, Northern District of New York, do hereby certify that I attended at the time and place set forth in the heading hereof; that I did make a stenographic record of the proceedings had in this matter and cause the same to be transcribed; that the foregoing is a true and correct copy of the same and the whole thereof.

VICKY A. THELEMAN, RPR, CRR
United States Court Reporter
US District Court - NDNY

Dated: August 15, 2008.